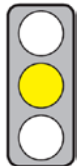


## KEY ISSUES

**Objective of the Directive:** The maximum emission levels of certain air pollutants that will be permitted from 2020 and from 2030 are extended to include additional air pollutants and reduced further. Intermediate emission levels to be achieved by 2025 will also be introduced.

**Affected parties:** Industry, transport, energy sector and agriculture.



**Pro:** (1) Legally binding standards for all Member States are essential in order to reduce air pollution, to limit its negative cross-border effects and to avoid distortions of competition.

(2) Intermediate emission targets for 2025 should be mandatory. Otherwise, drastic emission reductions within a short space of time cannot be carried out at a reasonable cost.

**Contra:** (1) The obligation to prepare an emission projection every two years is inappropriate.

(2) The catalogue of measures for the air pollution control programmes, being an "essential provision", cannot be amended by the Commission by way of delegated acts.

## CONTENT

### Title

**Proposal COM(2013) 920** of 18 December 2013 for a **Directive** on the **reduction of national emissions of certain atmospheric pollutants** and amending Directive 2003/35/EC

### Brief Summary

Page numbers refer to the Proposal for a Directive COM(2013) 920.

#### ► Air pollutants: Impact, cost and sources

- "Certain atmospheric pollutants" – sulphur dioxide (SO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>), ammonia (NH<sub>3</sub>), methane (CH<sub>4</sub>) and other "non-methane volatile organic compounds" (NMVOC), ozone (O<sub>3</sub>), fine particulate matter (PM<sub>2.5</sub>) – have a detrimental effect when in the air causing
  - damage to health,
  - acidification of soil and waters ("acid rain"),
  - eutrophication of waters [SWD(2013) 531, p. 94 et seq.].
- In the EU, this gives rise to
  - "direct costs" due to illness-related absence from work, health care, reduced crop yields and damage to buildings of an estimated 23 billion euro [SWD(2013) 531, p. 17] and
  - "indirect costs" due to damage to health and premature deaths inter alia as a result of respiratory diseases estimated between 330 and 940 billion euro [SWD(2013) 531, p. 30].
- The air pollutants SO<sub>2</sub>, NO<sub>x</sub>, NH<sub>3</sub>, CH<sub>4</sub> and NMVOC and PM<sub>2.5</sub> are emitted inter alia by road traffic and shipping, electricity production, private households, industry and agriculture. In addition, some of them contribute to the formation of O<sub>3</sub>. [SWD(2013) 531, p. 96 et seq.]

#### ► International Gothenburg Protocol and NEC Directive

- The EU has implemented its international obligations on the reduction of air pollutants under the Gothenburg Protocol of 1999 by way of the Directive on national emission ceilings (national emission ceilings – NEC; NEC Directive 2001/81/EC).
- The NEC Directive stipulates national emission ceilings ("ceilings") for each Member State, which had to be achieved by no later than 2010, for the following pollutants (Art. 4 in conjunction with Annex I NEC Directive 2001/81/EC):
  - Sulphur dioxide (SO<sub>2</sub>),
  - Nitrogen oxides (NO<sub>x</sub>),
  - Ammonia (NH<sub>3</sub>) and
  - "other non-methane volatile organic compounds" (NMVOC).
- Due to a revision of the Gothenburg Protocol in 2012, the existing NEC Directive is to be replaced by a new one.

► **New national emission reduction obligations for air pollutants**

- The ceilings on SO<sub>2</sub>, NO<sub>x</sub>, NH<sub>3</sub> and NMVOC, which have had to be met by the Member States since 2010, will continue to apply unchanged until 2019 (Art. 18 (1)). These ceilings will be reduced as from 2020 (Art. 4 (1), Annex II).
- In addition, new ceilings will be introduced which must be met by 2020 (Art. 4 (1) Annex II) for:
  - Methane (CH<sub>4</sub>) and
  - Fine particulate matter (PM<sub>2,5</sub>)
- New ceilings must be met for all the aforementioned air pollutants by 2030.
- "Intermediate emission levels" must already be achieved by 2025 (Recital 9) "unless this would entail disproportionate costs"; these intermediate emission levels are derived from the mean average of the actual emissions in 2020 and the reduction commitments applicable from 2030 (Art. 4 (2)).
- The ceilings are expressed, for each pollutant, as a percentage reduction by comparison with the base year of 2005 ("national emission reduction commitments").

► **Impact of the new emission reduction commitments**

- Compliance with the tougher ceilings as from 2030 offers
  - a direct economic benefit of roughly 2.8 billion euro per year and
  - an indirect economic benefit due to the reduction in damage to health amounting to roughly 40 billion euro.
- It is estimated that compliance with these ceilings will cost about 3.3 billion euro per year.
- The impact of the tougher ceilings in 2030 on the GDP of the EU and on employment is "small" [SWD(2013) 5, p. 57–59].

► **Air pollution control programmes and public participation**

- The Member States must set up national "air pollution control programmes" (Art. 6 (1)) and update them regularly (Art. 6 (3) and (4), Art. 9 (1)).
- They have to hold public consultations on the air pollution control programmes prior to finalising them (Art. 6 (5)). For this purpose, Annex I of the Directive on public participation in relation to the preparation of certain environmental plans and programmes (2003/35/EC) will be amended (Art. 16).
- The national air pollution control programmes must at least contain details of (Art. 6 (1), Annex III Part 2)
  - the measures proposed for meeting the targets from 2020 and from 2030, including an analysis of their impact [Annex III, Part 2, No. 1 (b)],
  - a timetable for implementation of the planned measures and establishment of the competent authorities [Annex III, Part 2, No. 1 (c)] and
  - the "national policy framework", in particular the responsibilities attributed to national, regional and local authorities, the success already achieved in improving air quality and the "policy priorities" in other relevant policy areas, e.g. climate change [Annex III, Part 2, No. 1 (a)].
- In their air pollution control programmes, Member States must either implement measures to reduce emissions of ammonia, fine particulate matter and black carbon from a predetermined, extensive and detailed catalogue (Annex III, Part 1) or take "measures having equivalent environmental effect to the extent necessary" (Art. 6 (2)).

► **Monitoring and reporting**

- Member States prepare
  - emission projections every two years for the period up to 2030 and "where available" up to 2040 and 2050 (Art. 7 (2), Annex I Table C, Annex IV),
  - annual reports on total emissions, itemised by pollutant ("emission inventories", Art. 7 (1), Annex I, Table A and B, Annex IV),
  - an accompanying "informative inventory report" (Art. 7 (3), Annex I, Table D, Annex IV).
- From 2017, Member States will communicate these to the Commission and the European Environmental Agency (Art. 9 (2)).
- The Member States monitor, "if practicable", the adverse impacts of air pollution (Art. 8 (1), Annex V).

► **Delegated acts**

- The Commission is given the power to adopt delegated acts (Art. 13 (1) and (2)) in order to amend
- the catalogue of measures which "may be included" in the national air pollution control programmes (Annex III, Part 1 (Art. 6 (7))),
  - the time limits which must be complied with by the Member States for
    - reporting (Annex I) and
    - preparation of emission inventories, projections and informative inventory reports (Annex IV) (Art. 7 (9)) and
  - the rules on the monitoring of the impact of pollutants (Annex V) (Art. 8 (3)).

## Main Changes to the Status Quo

- ▶ Until now, the NEC Directive only set out national emission ceilings for SO<sub>2</sub>, NO<sub>x</sub>, NH<sub>3</sub> and NMVOC. Now, national emission ceilings will also be fixed for CH<sub>4</sub> and PM<sub>2.5</sub>
- ▶ Until now, the NEC Directive only set out emission ceilings which had to be met by 2010. Now, ceilings will be fixed for the period up to 2030 and thereafter.

## Statement on Subsidiarity by the Commission

According to the Commission, air pollution is a trans-boundary issue which can be dealt with more effectively at EU level (p. 5).

## Policy Context

This proposal for a Directive is part of a "package" aimed at overhauling EU air pollution control policy. Additional parts of the package are a proposal for a Directive limiting the emission of certain pollutants from medium combustion plants [COM(2013) 919] and a Communication on a "new strategy" called "A Clean Air Programme for Europe" [COM(2013) 918]. The new strategy is a reworking of the Thematic Strategy on air pollution [COM(2005) 446] and has two objectives: Firstly, all existing legislation should be implemented by 2020 and secondly, a "trajectory" should be developed for achieving the long-term aim of air quality in the EU which does not "give rise to any significant negative impacts on or risks to human health and the environment" [Decision No. 1386/2013/EU (7<sup>th</sup> Environment Action Programme), Recital 15; see [cepPolicyBrief](#)].

In addition, the Air Quality Directive (2008/50/EC) stipulates how air quality must be assessed and monitored EU-wide. According to the Commission, a revision of the Air Quality Directive is not currently necessary [COM(2013) 918, p. 4].

## Legislative Procedure

18 December 2013	Adoption by the Commission
Open	Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force

## Options for Influencing the Political Process

Directorates General:	DG Environment (leading), DG Health
Committees of the European Parliament:	Environment, Public Health and Food Safety (leading), Rapporteur: Julie Girling (ECR Group)
Federal Ministries:	Environment, Conservation, Construction and Reactor Safety
Committees of the German Bundestag:	Environment, Conservation, Construction and Reactor Safety (leading); Economy and Energy, European Union Affairs.
Decision-making mode in the Council:	Qualified majority (Adoption by a majority of the Member States and with 260 of 352 votes; Germany: 29 votes)

## Formalities

Legislative competence:	Art. 192 TFEU (Environment)
Form of legislative competence:	Shared competence (Art. 4 (2) TFEU)
Legislative procedure:	Art. 294 TFEU (ordinary legislative procedure)

# ASSESSMENT

## Economic Impact Assessment

### Ordoliberal Assessment

Reducing air pollutants is necessary, firstly as a result of the commitment under the Gothenburg Protocol and secondly, in particular due to the detrimental effects on health which remain high in the EU despite the reductions already achieved. **In order to reduce air pollution, to limit its negative cross-border effects and to avoid distortions of competition in the internal market, legally binding standards are essential for all Member States.**

### Impact on Efficiency and Individual Freedom of Choice

The ceilings applicable after 2030 are tougher for all Member States than the ceilings applicable from 2020, and for some significantly so. Thus, Lithuania must reduce SO<sub>2</sub> emissions by only 8% from 2020 but by 46% from 2030, as against 2005 levels. **Drastic emission reductions within a short space of time are not possible, or not at a reasonable cost.** It is therefore important that, as is planned for 2025, "intermediate emission levels" provide early encouragement to the Member States to take continuous action – rather than implementing expensive ad-hoc measures towards the end of the commitment period – thereby promoting the achievement of the objectives. The intermediate emission levels will only have the desired effect, however, if they are also

mandatory. This is de facto not the case since Member States are not obliged to meet the intermediate emission levels where this "entails disproportionately high costs" and in the event of failure to comply only have to report this to the Commission. A consideration of the cost is basically appropriate from an economic point of view. There is a risk however, that Member States will misuse the argument of "disproportionately high costs" in order to avoid meeting their ceilings. **Intermediate emission targets for 2025 should also therefore be mandatory.**

Calculating intermediate emission levels based on actual emissions in 2020, rather than on the targets for 2020 means that Member States who by 2020 reduce their emissions further than required will have to achieve stricter intermediate emission levels in 2025. This weakens the incentive to exceed the targets set for 2020.

With the obligation to adopt national air pollution control programmes, the Member States are, in principle, given a free choice as to how they should achieve their national emission reduction commitments. This is appropriate as the Member States are thus able to take account of their own respective regional conditions, industrial structure and prioritisation in other areas of environment policy.

**The obligation to prepare an emission projection every two years** for the period up to 2030 **is misguided.** The amount of information gained over a two-year period would be too small by comparison with the costs involved.

Monitoring the impact of pollutants by Member States is necessary in order to verify the success of the measures being implemented. Where the impact of pollutants is severe, measures must be adjusted.

#### Impact on Growth and Employment

The Commission expects the impact on GDP and employment in the EU to be "small". This cannot yet be assessed, however, in particular because the Member States have a great deal of flexibility in the choice and arrangement of the measures they will use to achieve their national emission reduction commitments.

#### Impact on Europe as a Business Location

Negligible. The costs of the air pollution control policy are balanced by the benefits from a reduction in the detrimental impact on health which is, however, difficult to quantify.

## Legal Assessment

### Legislative Competency

Unproblematic. The EU can adopt legislation to protect the environment including measures to combat air pollution (Art. 192 TFEU).

### Subsidiarity

Unproblematic. Air pollution is a cross-border problem which requires EU-wide measures in order to combat it.

### Compatibility with EU Law in other Respects

**The catalogue of measures for the national air pollution control programmes** (Annex III Part 1) is voluntary to the extent that Member States basically are allowed to choose other measures instead which have "equivalent environmental effect". However, the catalogue of measures does have an indirectly binding effect as a result of its extensive scope and high level of detail. **Being an "essential provision", it cannot therefore, simply be amended by the Commission by way of delegated acts** (Art. 290 (1) TFEU; cf. generally [cepCommentary](#)).

Otherwise the EU legislative organs – the European Parliament and the Council – would be restricted to raising a general objection to a delegated act, in its entirety, within a time limit of just two months. Such a "veto" would represent a high hurdle and would result in a de facto power shift violating the institutional balance established by the EU Treaties, in general, and Art. 290 TFEU in particular.

## Conclusion

Legally binding standards for all Member States are essential in order to avoid distortions of competition. Drastic emission reductions within a short space of time cannot be carried out at a reasonable cost. Intermediate emission targets for 2025 should also therefore be mandatory. The obligation to prepare an emission projection every two years is inappropriate. The catalogue of measures for the air pollution control programmes, being an "essential provision", cannot be amended by the Commission by way of delegated acts.