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AirClim

Comments on draft NAPCP guidance and reporting template

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National Air Pollution Control Programmes (NAPCPs) play a central role in the implementation of the revised National Emission Ceilings Directive (hereinafter, “NEC Directive”) and to improve air quality in Member States more generally.

The EEB, Client Earth, AirClim, and Transport & Environment welcome the opportunity to provide comments to the draft guidance and reporting format for NAPCPs and would like to suggest the following improvements to the draft documents.

Public consultation

Scope of public participation

The draft guidance deals with stakeholder consultation (sub-section 7.4.1) and public consultation (sub-section 7.4.4) in the framework of Section 7.4 “Step 2: Identifying, evaluating, prioritising and selecting available additional PaMs”.

This may lead national authorities to believe that the obligation to consult the public is restricted to the identification and finalisation of additional PaMs.

However, according to Article 6(5) of the NEC Directive, Member States shall consult the public on the “draft national air pollution control plans”. Any interpretation which would limit the scope of consultation only to limited parts of the NAPCPs (such as the identification and selection of additional PaMs) would therefore be contrary to the NEC Directive.

We therefore suggest clarifying explicitly in the guidance that the requirement to consult the public relates to the entire NAPCP, including:

- the national air quality and pollution policy framework and policy priorities;
- the definition of the emission reduction trajectory for 2025 and the reasons for following a non-linear trajectory;
- the assessment of how the NAPCP ensures coherence with plans and programmes set up in other relevant policy areas;

- Potential additional emission reductions and policy and measures needed to reach long-term air quality objectives (e.g. WHO recommended concentration levels), beyond the NEC emission reduction commitments.

Moreover, the guidance should make clear that the public should be consulted on any draft NAPCP, i.e. also in case the NAPCP projects compliance with emission reduction commitments under the WM scenario and in case no additional PaMs are proposed.

To make this clear, we suggest dedicating a separate section to public consultation in the guidance document. This would offer the possibility to deal in the same section with the following topics:

- stakeholders consultation (currently under sub-section 7.4.1);
- public consultation (currently under sub-section 7.4.4);
- transboundary consultation (currently under sub-section 4.4.2); and
- Strategic Environmental Assessment (currently under sub-section 4.4.3).

In our view, the proposed approach would add clarity on the relationships between the different activities listed above. In particular, the guidance should make a clear distinction between stakeholder consultations (targeted to competent authorities and affected stakeholders, such as industry and NGOs) and public consultations held with the wider public. As these are two different processes, we suggest separating the two types of consultation in the reporting template (executive summary on page 4).

As regards Strategic Environmental Assessment (SEA), the guidance should clarify expressly that, even when the case-by-case screening process under Directive 2001/42/EC excludes the need to submit the NAPCP to SEA, Member States are still required to consult the public pursuant to Article 6(5) of the NEC Directive and Article 2 of Directive 2003/35/EC.

Criteria and best-practices for effective public consultation

We suggest that, in addition to referring to the Commission's Better Regulation Toolbox¹ (page 40 of the draft guidance), the guidance details criteria and best practices to comply with public consultation requirements. In particular, Member States should:

- Give the public early and effective opportunities to participate in the decision-making process, when all policy options are still open.
- Allow sufficient time for responses. A minimum of 12 weeks for consulting the public is recommended (as in the European Commission guidelines for stakeholder consultation)². Allowance should be made for official holidays and other potential timing difficulties.
- Be clear about the purpose of the consultation, the entire process and timeline: what happened prior to the consultation, how the consultation will be run and what can be expected after the consultation has closed (i.e. what decisions are to be taken, at

¹ Available at this link: http://ec.europa.eu/smart-regulation/guidelines/docs/br_toolbox_en.pdf

² Available at this link: http://ec.europa.eu/smart-regulation/guidelines/ug_chap7_en.htm

what stage, with which legal effects and who will be responsible for implementing them).

- Make sure the procedure is open and flexible enough to consider new options identified as a result of the public participation.
- Indicate the role of the different bodies involved in the process and their contact details.
- Ensure that the relevant information is electronically accessible to the public through a central portal.
- Provide a non-technical summary of the draft NAPCP to the public.
- Actively promote opportunities for public participation.
- Ensure participation of the widest audience possible, given the nature of air pollution problems which affect the population at large.
- Ensure participation of citizens and groups which are most affected by air pollution, e.g. patient organisations and people living in areas where ambient air quality limit values are breached.
- Take in due consideration the public's needs and abilities (language, literacy, access to the Internet, geographic location).
- Inform the public about the number of contributions received, the represented sectors, the final decision and give reasons for including/not including their respective views in the final NAPCP.
- Dedicate sufficient funding and capacity for the implementation of the consultation process.

In the reporting template (page 21), we suggest including:

- Information concerning the participants in the consultation;
- The duration of the consultation period;
- Information about the outcome of the consultation on all relevant aspects of the NAPCP (not only restricted to the selection of PaMs); and
- How the views expressed in the consultation have been taken into account or not taken into account, with relevant justifications.

Coherence with other policies and objectives

The EEB, Client Earth, AirClim, and Transport & Environment welcome as overall adequate the approach described in the guidance to ensure coherence between the NEC Directive and other policies. In particular, we strongly agree that NAPCPs should represent a tool for a two-fold coherence assessment. When preparing NAPCPs, Member States should consider not only how additional PaMs can impact other policies and objectives, but also how other policies and objectives may impact the NECD objectives. When negative implications on the NECD are identified, the NAPCP should directly amend the other policy. If not possible, the NAPCP should identify additional PaMs to mitigate potential negative impacts.

Furthermore, we believe that the guidance should be amended as regards coherence with EU air quality obligations and long-term objectives.

Coherence with EU air quality obligations

The lack of coherence between different levels of air pollution management has been highlighted as one of the reasons for poor air quality improvement across the EU. The need for more coherence between the Ambient Air Quality Directives and the NEC Directive is indeed particularly important to make progress. We suggest giving more emphasis to this aspect in both documents. In particular:

- Define “AQD objectives” and clarify that this term includes the air quality objectives set under both Directive 2008/50/EC (Air Quality Directive) and Directive 2004/107/EC (4th Daughter Directive relating to As, Cd, HG, Ni and PAHs in ambient air)
- In the guidance document:
 - page 29, sub-section 6.4.3: if the coherence assessment with the AQD objectives identifies negative impacts from any existing policy at any level, the NAPCP should include additional PaMs to address such issue and require an update of the relevant air quality plans, even if the Member State projects compliance with emission reduction commitments under the WM scenario;
 - page 37: make sure that regional and local authorities in zones where EU air quality limit values are breached are consulted.
- In the reporting template, section 9.2: include an additional section where Member States would detail additional actions needed to be taken to reach compliance with EU air quality objectives if compliance is not expected to be reached.

Coherence with EU long-term air quality objectives

It is essential that NAPCPs show coherence with the Union’s long term air quality objectives listed in article 1 of the Directive. We therefore suggest adding the following sections in the reporting template:

- A section to report progress made by current policies and measures in relation to the achievement of the Union’s long-term objectives for air quality listed in the directive’s article 1. This section should as a minimum include reference to the World Health Organisation’s guidelines for PM10 and PM2.5 given the high adverse impact of PM exposure on human health (inclusion in section 4.2 of the reporting template).
- A section to report projected improvement in air quality (WM) in relation with the long-term objectives. This section should as a minimum include reference to the World Health Organisation’s guidelines for PM10 and PM2.5 (inclusion in section 5.2 of the reporting template).
- A section to report projected improvement in air quality with additional measures (WAM) in relation with the World Health Organisation’s guidelines, at least for PM2.5 and PM10 (inclusion in section 9.2 of the reporting template).

We welcome the fact that objectives related to environmental impacts are included in section 9.2 of the reporting guidance. We suggest including similar objectives in earlier sections for comparison purposes (sections 4.2 and 5.2 of the reporting template).

Policy and measures (PaMs) and their impacts

Policy and measures

We suggest adding the following measures to the non-exhaustive list of potential PaMs listed in the guidance's appendix 2:

- **Solvents:** measures related to public procurement (e.g. water based road marking) and measures related to consumer information.
- **Agriculture:** measures promoting biogas production as well as farming practices which benefit both air quality and climate mitigation such as lower stocking density, organic fertilising methods, crop rotation and measures which aim at reducing consumers' meat and dairy consumption.
- **Road transport:** measures aimed at reinforcing in-use real world compliance and market surveillance.
- **Domestic combustion:** measures aimed at reinforcing market surveillance and measures to inform consumers about the cleanest installations and how to operate them efficiently.

Policy options targeting agriculture listed in the reporting template (pages 16-19) include a mix of mandatory and voluntary measures. We suggest separating mandatory measures from voluntary ones.

Section 7.1 in the guidance (page 31) should refer to additional measures for agriculture instead of mandatory measures. Mandatory measures should already be included in the WM scenario.

Prioritisation of black carbon emission reductions

We recommend including black carbon in the following sections of the reporting template:

- Section 4.1 - progress made by current policies (page 8) ; and
- Section 5.1 - projected emissions to air (page 13).

We regret the fact that the guidance does not give specific recommendations for black carbon emission reductions, other than the measures for PM2.5 emission reductions.

Impacts of measures on methane emissions

Given the importance of reducing methane to reduce ground-level ozone concentrations and to ensure coherence with the EU's climate goals, it would be relevant to refer explicitly to methane in the following sections of the reporting template:

- Section 4.1 - progress made by current policies (page 8) ;
- Section 5.1 - projected emissions to air (page 13) ; and
- Section 6 - policy options considered to comply with emission reduction commitments (pages 15-16).

Impacts of measures

- Section 9.2 of the reporting template requires the provision of information on the attainment of NO₂, PM₁₀, PM_{2.5} and O₃ limit and target values in 2020, 2025 and 2030. The table should also include information on other air quality objectives (e.g. SO₂).
- Section 9.2 of the reporting template: the guidance should clarify expressly that compliance with the air quality objectives shall be achieved in the shortest time possible and that the NEC Directive does not introduce any time extension or derogation. In this regard, if one or more air quality limit value(s) is (are) still expected to be breached, reasons for non-compliance should be given and additional measures considered, in consultation with the relevant local or regional authority(ies), including updates of the relevant air quality plans.
- It would be useful to add indicators which Member States could use to assess the health and socio-economic impacts and benefits of PaMs, e.g. reduction in premature deaths, heart attacks, respiratory cases such as bronchitis and asthma, hospital admissions, number of sick days for employees and lost school days for children, health care expenditures, and reduced damages to crop yields.

Monitoring of progress

- In the guidance document, at page 29, sub-section 6.4.1: delete the sentence “While not compulsory, this [ex-post review of the progress made by adopted PaMs] is generally regarded as best practice”. Such review is compulsory, pursuant to Part 1, point 1(a) (iii) of Annex III of the NEC Directive (“the progress made by current policies and measures in reducing emissions and improving air quality”).
- Include an assessment of PaMs taken as part of the implementation of the old NEC directive (prior to 2019). Experience with regard to the existing PaMs is a relevant consideration in relation to the projected WM scenario and the identification and selection of additional PaMs. In particular, in case of non-compliance with one or more of the 2010 ceilings, Member States should specify the reasons for such failure and explain how these shortcomings can be avoided in the new NAPCP.
- Indicate which entities are responsible for monitoring progress and reviewing PaMs (reporting template, section 8, pages 22-23).

2025 reduction trajectory

We suggest that the guidance clarifies what can be considered as “economically or technically more efficient” (Article 4(2)) and “measures not entailing disproportionate costs” (Annex III, Part I, Point 1(d)) to justify that a Member State deviates from the linear reduction trajectory for 2025.

Member States should justify which measures would be needed to meet the linear trajectory, for which reasons the proposed alternative trajectory is considered to be economically or technically more efficient and which measures will be implemented to meet this alternative trajectory.

Existing guidance under other policies offer good examples on how to define economic efficiency and disproportionate costs. For instance, the Guidance no. 20 on “Exemptions to environmental objectives”³ produced for the Water Framework Directive clarifies that “disproportionality” entails a political judgement which should be informed by economic information and an analysis of the costs and benefits of the measures. Given the uncertainty around estimates of costs and benefits, such guidance suggests the following:

- Disproportionality should not begin at the point where costs simply exceed quantifiable benefits.
- The assessment of costs and benefits has to include qualitative as well as quantitative costs and benefits.
- The margin by which costs exceed benefits should be appreciable and have a high level of confidence.

Importantly, such guidance document also clarifies that:

- When a Member State intends to derogate from an environmental objective for “disproportionate costs” considerations, all measures that can be taken without involving disproportionate costs should still be taken to reach the best status possible.
- The costs of measures required under the baseline (WM scenario) cannot be considered when deciding on disproportionate costs.

Moreover, we reiterate that, pursuant to Article 6(5) of the NEC Directive, Member States should consult the public on the 2025 emission reduction trajectory proposed in the NAPCPs. Member States should report about the consultation and its outcome in the reporting template (e.g. on page 21).

For clarity, we suggest indicating which emission reductions have been defined for 2025 in the reporting template’s section 3.1 (page 6) and section 5.1 (page 13).

³ Available at this link: https://circabc.europa.eu/sd/a/2a3ec00a-d0e6-405f-bf66-60e212555db1/Guidance_documentN%C2%B020_Mars09.pdf