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COVER NOTE

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

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To: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
Union

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Subject: Commission Staff Working Document Implementation Plan Accompanying
the document Proposal for a Directive of the European Parliament and of the
Council on the reduction of national emissions of certain atmospheric
pollutants and amending Directive 2003/35/EC

Delegations will find attached document SWD(2013) 537 final.

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COMMISSION STAFF WORKING DOCUMENT

Implementation Plan

Accompanying the document

**Proposal for a Directive of the European Parliament and of the Council
on the reduction of national emissions of certain atmospheric pollutants and amending
Directive 2003/35/EC**

{COM(2013) 920 final}

Implementation Plan¹

1. Title of the document for the proposed act

Implementation Plan accompanying the proposal for a Directive of the European Parliament and of the Council on the reduction of national emissions of certain atmospheric pollutants and amending Directive 2003/35/EC.

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3. Deliverables and implementation challenges

3.1. Transposition of the proposed Directive

To ensure the effective implementation of the proposed Directive across the Union, Member States must transpose the proposed act into national law in a complete, correct and timely manner.

Given that the proposed Directive will repeal Directive 2001/81/EC on National Emission Ceilings for certain atmospheric pollutants ("NEC Directive"),² Member States may choose to amend and complement the existing provisions enacted in national law transposing the NEC Directive or to enact new national legislation .

In any case, and without prejudice to the legislative approach chosen by the Member State in the light of the characteristics of their national legal system, the Member States' challenge is to ensure that the transposition occurs in time (eighteen months after its entry into force) and to guarantee its full application in a sufficiently clear and precise manner.

3.2. Implementation of the proposed Directive

A number of provisions in the proposed Directive may raise potential implementation challenges for the Member States. Those provisions are and challenges are listed below.

3.2.1. *To achieve national emission reduction commitments*

The proposed Directive lays down national emission reduction commitments ("NERCs") for 2020, 2025 and 2030 for each Member State expressed as a percentage reduction of annual emissions of sulphur dioxide (SO₂), nitrogen oxides (NO_x), ammonia (NH₃), volatile organic compounds other than methane (NMVOC), fine particulate matter (PM_{2,5}) and methane (CH₄)

¹ This Implementation Plan is provided for information purposes only. It does not legally bind the Commission on whether the identified actions will be pursued or on the form in which they will be pursued.

² Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants (OJ L 309, 27.11.2001, p. 22).

as compared to the total of emissions of each of those pollutants discharged by each Member State in 2005.

The 2020 NERCs are based upon the emission reduction commitments as agreed under the 1999 Protocol to the 1979 Convention on Long Range Transboundary Air Pollution to abate acidification, eutrophication and ground-level ozone, as amended in 2012 and will be largely attained through compliance with current relevant Union and national legislation.

The potential implementation and compliance challenges may thus concern the NERCs set for 2025 and for 2030.

a) National emission reduction commitments set for 2025

In comparison to the NERCs applicable for the period 2020-2024, Member States must reduce their emissions substantially further from 2025 according to the percentages specified in the proposed Directive.³ In this context, Member States will have to undertake the following:

- to adequately and sufficiently early identify and plan the policies and measures needed to achieve the NERCs, while respecting the conditions set out in the proposed Directive on the content of national air pollution control programme ("NAPCP") including those specified below;
- to identify the key sectors and sources contributing to the national emissions for the respective pollutants (e.g. energy production, domestic heating, industry, agriculture, transport) and to decide on the distribution of the required emission reductions across them to comply with the 2025 NERCs in a cost-effective manner;
- without prejudice to the implementation of existing Union legislation on specific emission sources (e.g. Directive 2010/75/EC on Industrial Emissions)⁴: to define the types of regulatory instruments and incentives needed to implement those measures and to achieve the 2025 NERCs in time, while taking into account the *acquis communautaire* and the specific conditions that may prevail in the Member States (e.g. energy and transport infrastructure and inter-linkages with national and EU policies).

b) National emission reduction commitments set for 2030

Whilst the NERCs set for 2030 entail a further reduction over those for 2025 onwards, the proposed Directive specifies that the 2030 NERCs shall only have to be achieved if measures not entailing disproportionate costs are available. Accordingly, and in addition to the implementation challenges referred above, Member States shall also identify potential additional effective measures that would lead to meeting the 2030 NERCs. Where Member States would consider that certain measures needed to achieve the shortfall would *de facto*

³ No national emission reduction commitments shall apply to methane (CH₄) for the year 2020.

⁴ Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (OJ L 334, 17.12.2010, p. 17).

entail disproportionate costs, they must document these findings using adequate criteria on the basis of which the proportionality of the costs compared to the benefits will be evaluated.

3.2.2. To draw-up and adopt national air pollution control programmes

Whereas the NEC Directive called for Member States to draw-up a national programme in 2002 and to update it, if necessary, in 2006, to ensure the achievement of the national emission ceilings ("NECs") by 2010⁵, it remains silent regarding its minimum content and the parameters that should be considered when being developed. As a result, national programmes of heterogeneous quality and precision have been developed leading in several cases to insufficient planning and implementation of measures and hence non-compliance with one or more NECs.

Consequently, the proposed Directive fine tunes the provisions and requires each Member State to draw-up, adopt and to regularly update a national air pollution control programme ("NAPCP") taking into account the wider air quality challenges of the Member State with a view to ensuring that the 2020, 2025 and potentially also the 2030 NERCs are met in time and without significantly impacting air quality in neighbouring Member States.

a) The content of the NAPCPs

Member States shall make sure that their NAPCPs contain, as a minimum, the information listed in Annex III of the proposed Directive. Furthermore, they must (i) give priority, when defining what measures to undertake to curb PM_{2.5} emissions, to those that lead to a reduction in emissions of black carbon (a powerful climate forcer and contributor to particulate matter pollution) and that (ii) include, when necessary, the measures set out in the proposed Directive aimed at reducing NH₃ and PM_{2.5} emissions from the agriculture sector or equivalent measures.

Member States will therefore have to define, assess and describe in their NAPCPs the following:

- the national air quality and pollution policy framework in which context the programmes are developed (e.g. identification of policy priorities and evaluation of the progress made by current policies and measures on air quality and pollution);
- the emission reduction policies and measures envisaged and selected for adoption and implementation to meet the NERCs set for 2020 and 2025, including information on the extent to which the policies and measures selected (i) give priority to the reduction of emissions of black carbon and (ii) are based upon the measures regarding emissions from agriculture as listed in the proposed Directive.

Regarding the NERCs established for 2030, in case where compliance is not assured due to a lack of proportionate measures, the NAPCPs shall provide information on the extent of the shortfall.

In addition Member State must update their NAPCPs under the following conditions:

⁵ The 2010 NECs shall apply until 31 December 2019 in accordance with the proposed Directive.

- to update every two years the background information contained in NAPCPs (e.g. information on the above-mentioned national air quality and pollution policy framework and an assessment of the implementation progress achieved);
- to update the list of emission reduction policies and measures selected for implementation each time emission inventories or projections show that compliance with one or more NERCs is not guaranteed.

b) The conditions affecting the content of NAPCPs

The minimum content of the NAPCPs, including the background information and the policies and measures selected for implementation shall not only be determined on the basis of the evaluation of the extent of the emission reductions to be achieved, but also on the obligation to prevent or reduce the transboundary impacts of air pollution, to contribute to the meeting of Union air quality objectives and to ensure coherence with any other relevant national plans or programmes. Member States shall therefore have to make sure of the following:

- to take due account of the transboundary nature of air pollution as emissions discharged in one Member State may significantly affect air quality in another Member State;
- to coordinate action between the different administrative levels in the Member States and fully consider the need to reduce air pollutant concentrations in zones and agglomerations where air quality objectives established e.g. in the 2008/50/EC Ambient Air Quality Directive ("AAQD")⁶ are not met;
- to guarantee a high degree of complementarity between NAPCPs and other plans and programmes that may concern directly or indirectly SO₂, NO_x, NMVOC, NH₃, PM_{2,5} and CH₄ emissions (e.g. the transitional national plans developed under Directive 2010/75/EC on Industrial Emissions).

c) The timing applicable to the NAPCPs

Member States shall have to make sure that their NAPCPs are drawn-up and adopted on the day where the proposed Directive shall have to be transposed at the latest (18 months after its entry into force.

Member States shall therefore need to start collecting and processing relevant information as soon as possible after the entry into force as high quality NAPCPs are essential to ensure a successful implementation of the proposed Directive.

3.2.3. *To establish emission inventories and to report them*

The current NEC Directive requires Member States to make use of the methodologies agreed upon by the Convention on Long-range Transboundary Air Pollution ("LRTAP") and of the guidebook developed by EMEP to prepare and establish their emission inventories.

⁶ Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (OJ L152, 11.6.2008, p. 1).

As to the timing for reporting emissions inventories, the existing NEC Directive provides that Member States submit by 31 December each year to the Commission their final emission inventories for the previous year but one (X-2) and their provisional emission inventories for the previous year (X-1).

In addition, the current LRTAP monitoring and reporting guidelines provide also (i) for national gridded data of emissions by source category and for Large Point Sources by source category to be reported by Parties to the Secretariat General of the UNECE that hosts the Convention every 5 years and (ii) for the voluntary reporting by these Parties of an annual Informative Inventory Report alongside national emission inventories.

The emission monitoring and reporting requirements are extended under the proposed Directive with a view to aligning Union legislation with the LRTAP monitoring and reporting requirements and guidelines, that currently are being revised. In particular, as compared to the relevant provisions of the existing NEC Directive and to the current LRTAP guidelines, Member States will have to address the following implementation challenges:

- to provide the Commission with their final emission inventories for the previous year but one (X-2), by 15 February each year. Member States will therefore have to ensure to make the necessary adjustments regarding the collection and processing of all relevant data sufficiently in advance so as to timely report them;
- to provide the Commission with their preliminary emission inventories for the previous year (X-1), by 30 September each year. Member States will therefore have to ensure to make the necessary adjustments regarding the collection and processing of all relevant data sufficiently in advance so as to report them as early as September 30 *i.e.* 3 ½ months earlier than under current rules;
- to provide the Commission on 15 March each year with a mandatory Informative Inventory Report providing details on national emission inventories and projections. Hence, whereas this requirement was only optional under current Union and international rules, the proposed Directive makes it compulsory in view of the revision and updating of the LRTAP reporting guidelines.

4. Support Actions:

4.1 Possible Commission Actions:

4.1.1 To promote complete, correct and timely transposition of the proposed Directive

Upon the entry into force of the proposed Directive:

- To provide Member States with a transposition checklist to ensure a common understanding (i) of the meaning of the provisions of the proposed Directive and of their interaction and (ii) of the links between those provisions and relevant provisions contained in other Union legal instruments (e.g. provisions of the AAQD).
- To organise a transposition workshop with Member States to address key transposition issues, including on the timing of the obligations contained in the proposed Directive.

The Commission may also decide to make use of the Ambient Air Quality Committee established under the AAQD to discuss transposition issues with Member States and provide responses to questions they may raise.

- To appoint a "transposition" contact point at DG ENV to liaise informally with competent national authorities in charge of the transposition of the proposed Directive to address specific transposition questions and issues those authorities may raise.

Between the entry into force and the transposition deadline of the proposed Directive:

- To address administrative reminder letters to Member States, which will be identified as being at risk of running late in transposing the proposed Directive (identification based upon Member States' notifications to the Commission of their transposing measures).
- To establish on the Europa website a transposition scoreboard indicating whether Member States have transposed the proposed Directive or not. This scoreboard will be operational six months prior to the transposition deadline.

Upon expiry of the transposition deadline of the proposed Directive:

- To launch conformity-checking studies to assess the completeness and correctness of the notified transposing national measures.
- To promote an informal exchange of view between the above-mentioned DG ENV contact point and national competent authorities in charge of the transposition of the proposed Directive.
- Should the informal dialogue fail to correct transposition shortcomings, the Commission may launch EU PILOT cases to ask clarifications from the concerned Member States on these identified shortcomings and whether and what measures would they intend to take to correct them together with a timetable.
- Should an EU PILOT file fail to lead to a complete and correct transposition, the Commission may contemplate the option consisting in launching infringement procedures.

4.1.2 *To promote complete, correct and timely implementation of the proposed Directive*

To establish as soon as possible and even before the entry into force of the proposed Directive, strengthened platforms to enable dedicated and inter-active dialogues on the implementing provisions contained in the Directive amongst all relevant actors, including the Member States' competent authorities at all relevant levels, the Commission, industry, civil society, and the scientific community (see envisaged non-regulatory actions set out in the Commission new air strategy "A Clean Air Programme for Europe"⁷).

⁷ Communication from the Commission to the European Parliament and the Council "A Clean Air programme for Europe", COM[xxxx]

- To address specific implementation issues and provide guidance to Member States throughout the Ambient Air Quality Committee established under the AAQD.
- To appoint an "implementation" contact point at DG ENV to liaise informally with competent national authorities in charge of the implementation of the proposed Directive to address specific implementation questions and issues these authorities may raise.
- To establish on the Europa website a Frequently Asked Questions section to be updated on a regular basis.
- To issue Commission Implementing Acts specifying (i) the detailed rules for the use of the flexibilities (international maritime emission off-setting, joint implementation, adjustments of national emission inventories) provided for in the proposed Directive and (ii) the format and the necessary information concerning the NAPCPs
- To issue Guidance on the elaboration and implementation of the NAPCPs and on other issues, should the need arise.
- To facilitate the elaboration and implementation of NAPCPs through an exchange of good practice, including via a website containing good examples

Possible Member State Actions:

- To establish national stakeholder expert groups and consultation platforms.
- To prepare 'explanatory documents' on transposition and will be provided with the possibility to consult the Commission on draft transposition measures (mandatory).
- To appoint one or more contact points to address issues to DG ENV on the transposition and implementation of the proposed Directive (recommended).
- To keep the Commission informed on any potential problems related to the implementation of the proposed Directive.
- To set up dedicated and publicly accessible web-pages in the national language in which e.g. the NAPCPs, the national emission inventories, projections and informative inventory reports will be uploaded and will be encouraged to add in the web-pages Frequently Asked Questions and information on e.g. best practices.