

# Revision of the Ambient Air Quality Directive

## ClientEarth's key recommendations to improve Commission Proposal COM/2022/542

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ClientEarth welcomes the European Commission's proposal for a recast Ambient Air Quality Directive (the "Proposal") for its ambitious intentions. Nevertheless, as lawyers and as EU citizens, we have serious concerns about its implementation if a number of improvements are not made. These concerns are shared with members of the NGO and health communities.

ClientEarth's key recommendations for improving the Proposal are:

1. Limit values aligned with the WHO's Air Quality Guidelines (the "WHO AQGs") by 2030, to protect the health of everyone in the EU.
2. Closing loopholes in the legal framework for air quality plans and the accompanying sanctions regime, in order to ensure public authorities take early, appropriate and effective measures to comply with air quality standards.
3. Maintaining and strengthening the proposed provisions for access to justice and compensation. Making sure that citizens and civil society have access to courts is vital to the proper functioning of the legislation.

According to the latest analysis, 96% of people in the European Union (the "EU") breathe air whose pollution level is above the threshold that the World Health Organization (the "WHO") considers harmful.<sup>1</sup> Toxic air

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<sup>1</sup> <https://www.eea.europa.eu/highlights/vast-majority-of-europes-urban>

makes people sick and cuts lives short, affecting people's quality of life and putting pressure on health systems and economies. Vulnerable people such as children, the elderly, and people with health conditions are particularly badly affected, while people on low incomes are disproportionately exposed, creating and exacerbating inequalities in our communities. Robust clean air legislation is vital to ensure that action is taken so that people across the EU can live healthy and fulfilling lives.

This briefing addresses our key recommendations in greater detail, and we are available to discuss these and other points with decision makers and other interested stakeholders.

## **Stricter limit values to properly protect people's health**

The current legislation makes use of a number of different types of air quality standards, of which the most effective, according to the Commission's own assessment, are limit values.<sup>2</sup> Limit values are legally enforceable maximum levels of each individual air pollutant which must be respected by a given deadline and should never be exceeded thereafter. ClientEarth strongly supports the proposal to use limit values as the key air quality standard. Any weakening on this front would be a huge loss for everyone.

Article 13 and Annex I of the Proposal set out the limit values that must be attained **by 2030** for a number of harmful pollutants. These limit values are stricter than in the current legislation, but still not as protective as the recommendations of the WHO AQGs. To give just two examples, proposed limit values for PM<sub>2.5</sub> and NO<sub>2</sub> would still allow concentrations *twice as high* as the health-based recommendations of the WHO. As a result, while we welcome the fact that the Proposal has tried to strengthen limit values, the lack of ambition means this is a real missed opportunity, and means that it will fail to truly protect people's health.

After 2030, the Proposal speaks of an objective to reach a zero pollution, toxic-free environment by 2050 (see Article 1 and recitals), but it does not set out any clear way of doing this. Rather than proposing limit values completely aligned with the WHO's recommendations, the Proposal relies only on average exposure reduction obligations. These are air quality standards that have already proven to be ineffective and unenforceable under the current legislation. Average exposure reduction obligations allow air pollution hotspots to be ignored, and areas with high levels of air pollutants to be offset against relatively cleaner zones. As a result, the most vulnerable people living in the most polluted areas would be deprived of protection from harmful levels of pollution. This is a huge problem for social justice and equality. The only way of ensuring that *everyone* enjoys clean and healthy air is to introduce limit values aligned with the WHO AQGs.

## **Closing loopholes in the framework for air quality plans to make sure that action is taken to avoid, prevent, and reduce impact of poor air quality**

Air quality plans ("AQPs") are the cornerstone of the Ambient Air Quality Directive (the "AAQD"). They are the tool that brings air quality objectives to life, by ensuring that competent authorities take appropriate and effective measures to improve air quality and protect people's health .

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<sup>2</sup> Fitness Check on the Ambient Air Quality Directives [SWD\(2019\)427](#)

The Proposal mandates AQPs to be put in place in advance of the limit values' attainment deadline in 2030 ("Delivery Plans"). This is a welcome improvement, as it will require and help public authorities to take steps to meet limit values in time and prevent exceedances. Unfortunately, the time-frames proposed in [Article 19\(4\)](#) mean that this opportunity is almost entirely wasted, because the first Delivery Plans will only need to be in place four years after the entry into force of the recast AAQD (that is, potentially only in late 2028 or 2029 – see the flowchart in Annex 1 to this briefing for a description of why the current procedure is flawed). This is far too late to adopt and implement sound air quality policies that can then deliver compliance in time. By allowing such a long procrastination, the proposed time-frames pave the way for widespread and significant breaches of limit values in 2030.

Given that information on pollution levels is already available, there is no reason to waste four years before adopting the first plans. As soon as the proposed AAQD enters into force, competent authorities in zones where the new air quality standards are exceeded should be required to adopt Delivery Plans. This obligation would also make sure that the competent authorities have access to financial resources in their budgets to take early action and save lives from the harmful impacts of air pollution without unnecessary delay.

When breaches of limit values occur after the 2030 attainment deadline, the Proposal demands the adoption of AQPs to remedy such situation ("Remedial Plans"). [Article 19\(1\)](#) and [Annex VIII](#) contain some much needed clarifications to ensure more effective implementation and clearer guidance for competent authorities. However, the Proposal contains various ambiguities and inconsistencies.

The most concerning loophole is that the only consequence for failure to comply with the limit values by 2030 is an obligation to adopt a Remedial Plan within two years of the breach. If the Remedial Plan fails to deliver compliance after the third year of its adoption (i.e. 2035), the only consequence is an obligation to update and improve the Remedial Plan and aim for a new deadline in 2039. There is no backstop and this process can continue ad infinitum; all that is required is that competent authorities update the Remedial Plans and set new deadlines (see the flowchart in Annex 2 to this briefing for a description of why such procedure is flawed).

To break this vicious cycle, a robust system of time-based sanctions must be put in place, resulting in financial consequences for public authorities that miss deadlines, and thereby creating a powerful incentive for urgent remedial action.

## **Giving citizens and civil society across the EU access to justice and levelling the playing field**

[Article 27](#) of the Proposal sets out how citizens and civil society can have recourse to the courts, to make sure that the new rules are properly implemented and that air quality in our neighbourhoods is actually improved in line with the set goals. This is a very important improvement on the current legislation, and we commend it. Access to justice is a fundamental right guaranteed by international treaty the Aarhus Convention, which has been ratified by the EU and its Member States.<sup>3</sup> The Fitness Check on the current AAQD found that "*enforcement action ... by civil society actors in front of national courts ... [has] proven to be important to accelerate downward trends for air pollution*".<sup>4</sup>

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<sup>3</sup> See [Access to Justice in European Union Law - a legal guide on Access to Justice in environmental matters Edition 2021](#).

<sup>4</sup> Fitness Check on the Ambient Air Quality Directives [SWD\(2019\)427](#), page 86.

However, there are no explicit access to justice provisions in the current AAQD, and overly restrictive national legislation means that citizens in many EU Member States are left without any judicial protection against air pollution. Ensuring that access to justice is incorporated into the recast AAQD is the only way to ensure that these inequalities are addressed, and that all individuals affected by harmful levels of air pollution can go to court to protect themselves.

ClientEarth also welcomes the inclusion of a provision allowing individuals to claim compensation for damage caused to their health by breaches of air quality standards ([Article 28](#)). This codifies rights that many individuals already have under their national laws. However, the fact that there is currently no harmonised mechanism at the EU level to guarantee these rights leads to confusion and creates an uneven playing field, putting citizens from some Member States at a disadvantage. The inclusion of this provision is therefore an indispensable building block for greater justice.

We believe that the proposed provisions on access to justice and compensation are important steps in the right direction. We have some suggestions to improve the drafting of these: to clarify what is a sufficient interest to claim compensation; simplify the amount of evidence that citizens need to gather; ensure that the scope of these key provisions includes *all* breaches of the AAQD; and provide the right remedies to achieve quick and effective corrective action.

However, the most important priority is to make sure that these provisions remain in the final version of the AAQD, as without them, the EU cannot guarantee that its air quality legislation will be fair and equitable.

## Further information:

We would welcome the opportunity to discuss all of these issues further with decision-makers and other stakeholders who want to protect the health of people across the EU.

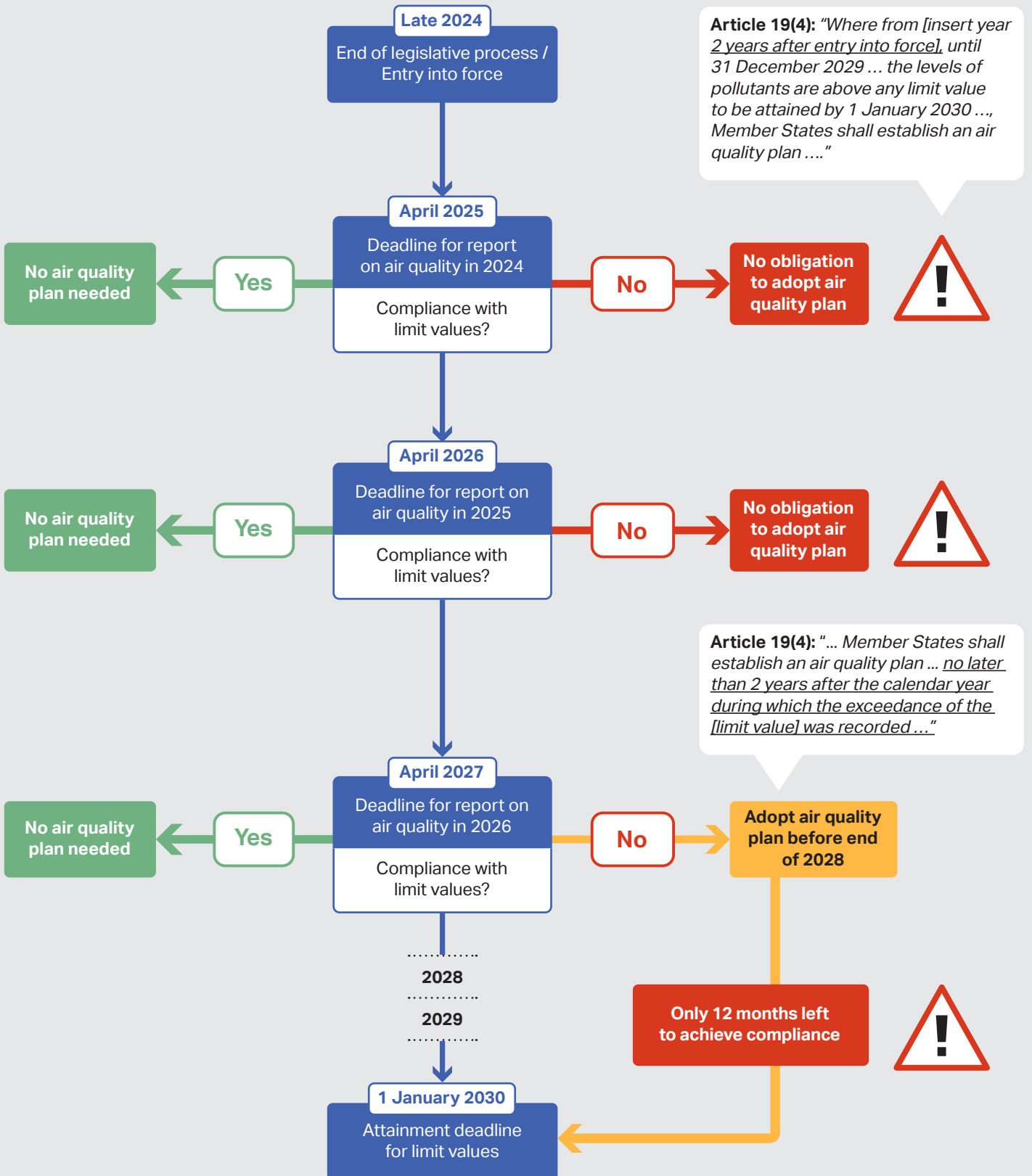
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# Annex 1 – Flaws in the process for Delivery Plans (Article 19(4))



# Annex 2 – Flaws in the process for Remedial Plans (Article 19(1))

