Directive (EU) 2016/2284 of the European Parliament and of the Council of 14 December 2016 on the reduction of national emissions of certain atmospheric pollutants, amending Directive 2003/35/EC and repealing Directive 2001/81/EC (Text with EEA relevance)

DIRECTIVE (EU) 2016/2284 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Having regard to the opinion of the Committee of the Regions[(2)],

Acting in accordance with the ordinary legislative procedure[(3)],

Whereas:

(1) Significant progress has been achieved over the past 20 years in the Union in the field of anthropogenic air emissions and air quality, in particular through a dedicated Union policy, including the Communication from the Commission of 21 September 2005 entitled ‘Thematic Strategy on Air Pollution’ (the ‘TSAP’). Directive 2001/81/EC of the European Parliament and of the Council[(4)] has been instrumental in that progress by setting caps on Member States' total annual emissions from 2010 onwards of sulphur dioxide (SO_2), nitrogen oxides (NO_x), non-methane volatile organic compounds (NMVOC) and ammonia (NH_3). As a result, sulphur dioxide emissions were reduced by 82 %, nitrogen oxides emissions by 47 %, non-methane volatile organic compounds emissions by 56 % and ammonia emissions by 28 % in the Union between 1990 and 2010. However, as indicated in the Communication from the Commission of 18 December 2013 entitled ‘A Clean Air Programme for Europe’ (the ‘revised TSAP’), significant negative impacts on and risks to human health and the environment remain.

(2) The 7th Environment Action Programme[(5)] confirms the Union's long-term objective for air policy, to achieve levels of air quality that do not give rise to significant negative impacts on and risks to human health and the environment, and calls, to that end, for full compliance with the current air quality legislation of the Union, post-2020 strategic

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targets and actions, enhanced efforts in areas where the population and ecosystems are exposed to high levels of air pollutants, and reinforced synergies between air quality legislation and the Union's policy objectives that have been set, in particular, for climate change and biodiversity.

(3) The revised TSAP sets out new strategic objectives for the period up to 2030 with a view to moving further towards the Union's long-term objective on air quality.

(4) Member States and the Union are in the process of ratifying the United Nations Environment Programme Minamata Convention on Mercury of 2013, which seeks to protect human health and the environment through the reduction of mercury emissions from existing and new sources with a view to its entry into force in 2017. Reported emissions of that pollutant should be kept under review by the Commission.

(5) Member States and the Union are parties to the United Nations Economic Commission for Europe (UNECE) Convention on Long-Range Transboundary Air Pollution of 1979 (the 'LRTAP Convention') and to several of its Protocols, including the Protocol to Abate Acidification, Eutrophication and Ground-level Ozone of 1999, which was revised in 2012 (the 'revised Gothenburg Protocol').

(6) As regards the year 2020 and thereafter, the revised Gothenburg Protocol sets out new emission reduction commitments, taking the year 2005 as a base year, for each party regarding sulphur dioxide, nitrogen oxides, non-methane volatile organic compounds, ammonia and fine particulate matter, promotes the reduction of emissions of black carbon and calls for the collection and maintenance of information on the adverse effects of air pollutant concentrations and depositions on human health and the environment and for participation in the effects-oriented programmes under the LRTAP Convention.

(7) The national emission ceiling regime established by Directive 2001/81/EC should therefore be revised in order to align it with the international commitments of the Union and the Member States. To that effect, the national emission reduction commitments for any year from 2020 to 2029 in this Directive are identical to those set in the revised Gothenburg Protocol.

(8) Member States should implement this Directive in a way that contributes effectively to achieving the Union's long-term objective on air quality, as supported by the guidelines of the World Health Organisation, and the Union's biodiversity and ecosystem protection objectives by reducing the levels and deposition of acidifying, eutrophifying and ozone air pollution below critical loads and levels as set out by the LRTAP Convention.

(9) This Directive should also contribute to achieving, in a cost effective manner, the air quality objectives set out in Union legislation and to mitigating climate change impacts in addition to improving air quality globally and to improving synergies with Union climate and energy policies, while avoiding duplication of existing Union legislation.

(10) This Directive also contributes to reducing the health-related costs of air pollution in the Union by improving Union citizens' well-being, as well as to favouring the transition to a green economy.

(11) This Directive should contribute to the progressive reduction of air pollution, building on reductions delivered by Union source-based air pollution control legislation which addresses emissions of specific substances.

(12) Union source-based air pollution control legislation should effectively deliver expected emission reductions. Identifying and responding to non-effective Union source-based air pollution control legislation at an early stage is essential to achieving wider air quality objectives, as demonstrated by the discrepancy between real world emissions and test emissions of nitrogen oxides from EURO 6 diesel cars.

(13) Member States should comply with the emission reduction commitments set out in this Directive from 2020 to 2029 and from 2030 onwards. In order to ensure demonstrable progress towards the 2030 commitments, Member States should identify indicative emission levels in 2025 which would be technically feasible and would not entail disproportionate costs, and should endeavour to comply with such levels. Where the 2025 emissions cannot be limited in accordance with the determined reduction trajectory, Member States should explain the reasons for that deviation as well as the measures that would bring the Member States back on their trajectory in their subsequent reports to be prepared pursuant to this Directive.

(14) The national emission reduction commitments set out in this Directive for 2030 onwards are based on the estimated reduction potential of each Member State contained in the TSAP Report no 16 of January 2015 ('TSAP 16'), on technical examination of the differences between national estimates and those in TSAP 16, and on the political objective to maintain the overall health impact reduction by 2030 (compared with 2005) as close as possible to that of the Commission proposal for this Directive. To enhance transparency, the Commission should publish the underlying assumptions used in TSAP 16.

(15) Compliance with national emission reduction commitments should be assessed by reference to the specific methodological status at the time the commitment was set.

(16) Reporting requirements and emission reduction commitments should be based on national energy consumption and fuels sold. However, some Member States are able, under the LRTAP Convention, to use the national emission total calculated on the basis of fuels used in relation to the road transport sector as a basis for compliance. That option should be kept in this Directive in order to ensure coherence between international and Union law.

(17) In order to address some of the uncertainties inherent in setting national emission reduction commitments, the revised Gothenburg Protocol includes flexibilities which should be incorporated into this Directive. In particular, the revised Gothenburg Protocol establishes a mechanism to adjust national emission inventories and to average national annual emissions for a maximum of three years where certain conditions are met. In addition, flexibilities should be laid down in this Directive where it imposes a reduction commitment which exceeds the cost-effective reduction identified in TSAP 16 and also to assist Member States in case of sudden and exceptional events related to energy generation or supply provided that specific conditions are met. The use of those

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flexibilities should be monitored by the Commission while taking into account guidance developed under the LRTAP Convention. For the purposes of assessing applications for adjustments, the emission reduction commitments for the period between 2020 and 2029 should be considered to have been set on 4 May 2012, the date when the Gothenburg Protocol was revised.

(18) Each Member State should draw up, adopt and implement a national air pollution control programme with a view to complying with its emission reduction commitments, and to contributing effectively to the achievement of the air quality objectives. To that effect, Member States should take account of the need to reduce emissions, in particular of nitrogen oxides and fine particulate matter, in zones and agglomerations affected by excessive air pollutant concentrations and/or in those zones and agglomerations that contribute significantly to air pollution in other zones and agglomerations, including in neighbouring countries. National air pollution control programmes should, to that end, contribute to the successful implementation of air quality plans established under Article 23 of Directive 2008/50/EC of the European Parliament and of the Council[(6)].

(19) In order to reduce emissions from anthropogenic sources, national air pollution control programmes should consider measures applicable to all relevant sectors, including agriculture, energy, industry, road transport, inland shipping, domestic heating and use of non-road mobile machinery and solvents. However, Member States should be entitled to decide on the measures to adopt in order to comply with the emission reduction commitments set out in this Directive.

(20) In drawing up national air pollution control programmes, Member States should take into account best practices in addressing, inter alia, the most harmful pollutants within the scope of this Directive with respect to sensitive human population groups.

(21) Agriculture makes an important contribution to atmospheric ammonia and fine particulate matter emissions. In order to reduce those emissions, national air pollution control programmes should include measures applicable to the agricultural sector. Such measures should be cost-effective and based on specific information and data, taking account of scientific progress and previous measures undertaken by Member States. The common agricultural policy offers the possibility for Member States to contribute to air quality with specific measures. Future evaluation will provide a better understanding of the effects of those measures.

(22) Improvements in air quality should be achieved through proportionate measures. When taking measures to be included in national air pollution control programmes which are applicable to the agricultural sector, Member States should ensure that their impacts on small farms are fully taken into account in order to limit, as much as possible, any additional costs.

(23) Where certain measures taken under national air pollution control programmes aimed at preventing emissions in the agricultural sector are eligible for financial support, in particular measures by farms requiring significant changes of practices or significant investments, the Commission should facilitate access to such financial support and to other available Union funding.

(24) In order to reduce emissions, Member States should consider supporting the shift of investments to clean and efficient technologies. Innovation can help to improve sustainability and to solve problems at source by improving sectoral responses to air quality challenges.

(25) National air pollution control programmes, including the analysis supporting the identification of policies and measures, should be regularly updated.

(26) In order to draw up well informed national air pollution control programmes and any significant updates, Member States should make those programmes and updates subject to consultation with the public and competent authorities at all levels and at a time when all options regarding policies and measures remain open. Member States should engage in transboundary consultations where the implementation of their programmes could affect the air quality in another Member State or third country, in accordance with the requirements set out in Union and international law, including the UNECE Convention on Environmental Impact Assessment in a Transboundary Context (the 'Espoo Convention') of 1991 and its Protocol on Strategic Environmental Assessment of 2003.

(27) The aim of this Directive, inter alia, is to protect human health. As the Court of Justice has pointed out on numerous occasions, it would be incompatible with the binding effect which the third paragraph of Article 288 of the Treaty on the Functioning of the European Union (TFEU) ascribes to a directive to exclude, in principle, the possibility of an obligation imposed by a directive from being relied on by persons concerned. That consideration applies particularly in respect of a directive which has the objective of controlling and reducing atmospheric pollution and which is designed, therefore, to protect human health.

(28) Member States should prepare and report national emission inventories and projections as well as informative inventory reports for all air pollutants covered by this Directive, which should then enable the Union to comply with its reporting duties under the LRTAP Convention and its Protocols.

(29) In order to preserve overall consistency for the Union as a whole, Member States should ensure that their reporting to the Commission of their national emission inventories and projections as well as informative inventory reports are fully consistent with their reporting under the LRTAP Convention.

(30) In order to assess the effectiveness of the national emission reduction commitments laid down in this Directive, Member States should also monitor the impacts of air pollution on terrestrial and aquatic ecosystems, and report such impacts. In order to ensure a cost-effective approach, Member States should be able to use the optional monitoring indicators referred to in this Directive and should coordinate with other monitoring programmes established pursuant to related Directives and, if appropriate, to the LRTAP Convention.

(31) A European Clean Air Forum involving all stakeholders, including the competent authorities of the Member States at all relevant levels, should be established to exchange experience and good practices, in particular to provide input for guidance and