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Important problems in the Netherlands with the implementation of Council Directive 1999/30/EC (First Daughter Directive under the Air Quality Framework Directive); report to Parliament and Council

In the Netherlands, we have implemented the First Daughter Directive (1999/30/EC) in our national air quality decree (“Besluit luchtkwaliteit”). This directive contains limit values for the protection of human health as well as limit values for the protection of the ecosystem. Recently, we have experienced great difficulties related to this air quality decree and the underlying air quality directive. These difficulties specifically relate to the implementation and the application of the limit values for human health in practice, including court cases.

When transposing the directive in national legislation, we concluded that there is ambiguity as to where the limit values for the protection of human health apply. From the legal text, it is not entirely clear whether the intention of the directive is to focus on achieving defined levels of pollutants in ambient air

- a) everywhere in the European Union excluding workplaces, regardless of probability of members of the public’s exposure, or
- b) where members of the public are regularly present and might reasonably be expected to be exposed over the relevant averaging period.

In our view, the latter interpretation is clearly the most reasonable one, but it takes a complicated legal and technical analysis of interactions between the articles and the annexes of the First Daughter Directive to arrive at such a conclusion. The directive is not clear in this respect. Due to this lack of clarity of the directive, we have thus far been unable to formally limit in our national legislation the area of application of the air quality limit values for human health to those locations where relevant exposure can reasonably be expected.

This situation has led to a number of cases where the highest administrative court has ruled that the air quality limit values in the Dutch national air quality decree (Besluit luchtkwaliteit) apply everywhere excluding workplaces, regardless of probability of members of the public’s exposure. As a result, several important infrastructural projects are being blocked, due to exceedances of limit values for the protection of human health, at locations where there is no relevant exposure whatsoever to be expected.

Obviously this is a state of affairs that is not only socially unacceptable, but potentially also leads to a loss of public support for air quality policy in general. Therefore, I feel that a solution for this issue is urgently needed. The forthcoming review of the First Daughter Directive can be very helpful in this respect.

As I understand, the Commission is about to issue a report on the experiences with the implementation of the First Daughter Directive to Parliament and Council. The fact that the current directive lacks clarity has already been flagged up by a technical working group under the CAFE-program (WG on Implementation), that has provided recommendations for the review. Among other things, this working group “suggests that reviews and assessments for the protection of human health should be focused on those locations where members of the public are likely to be regularly present and are likely to be exposed over the averaging period of the objective. The directive should not consider exceedances of the objectives at any location where relevant public exposure would not be realistic.”

In view of the above mentioned recent court cases in the Netherlands, I am of the opinion that it would be very helpful if the report to Council and Parliament contains clarifying statements on the area of application of the air quality limit values for human health. With this respect, I would like to suggest that the Commission would state in the report that “*these limit values are indeed intended to apply at those locations where members of the public are likely to be regularly present and are likely to be exposed over the averaging period of the limit value*”. Such a statement would preferably be followed by the announcement that the area of application of the limit values will be clarified in a future revision of the First Daughter Directive within the framework of the forthcoming Thematic Strategy on Air Pollution (CAFE-program, 2005).