

Roadmap on an EU Action Plan Towards a Zero Pollution Ambition for air, water and soil

Feedback from ClientEarth

ClientEarth is a non-profit European environmental law organisation with offices in Brussels, London, Madrid, Berlin, Warsaw and Luxembourg (as well as Beijing and Los Angeles). In total, ClientEarth currently has over 200 staff working on projects in more than 50 countries. Using the power of the law, we develop legal strategies and tools to address major environmental issues, we provide legal support and information to most of the environmental NGOs in Brussels (and beyond) and use the courts where necessary to enforce environmental law. The organisation is composed of programmes on Climate, Energy, Fossil Fuels Infrastructure, Trade, Oceans, Harmful chemicals, Plastics, Clean air, Wildlife, Forest, Agriculture and Environmental Democracy.

ClientEarth welcomes the foreseen EU Action Plan “Towards a Zero Pollution Ambition for air, water and soil”. In order to deliver the ambition of achieving zero pollution to protect people and ecosystems, the action plan should contain the following features.

1 Definition of zero pollution

The action plan should contain a clear definition of what zero pollution means. In ClientEarth’s view, the zero pollution ambition should include two aspects: (i) achieving safe levels of air, water and soil quality for human health and the environment, and (ii) reducing anthropogenic emissions to the extent needed to eliminate harmful impacts of pollution on people’s health and the environment. Scientific recommendations (such as the World Health Organization air quality guidelines) represent the clear point of reference when defining the levels of protection against pollution. The zero pollution ambition should be reflected in binding targets that will ensure a toxic free environment by 2030.

Particular attention should be given to the precautionary, preventive and polluter pays principles. Polluting activities and use of harmful substances should only be allowed when they provide an essential

service to society that cannot be provided in a safer way, but limiting any emission to the minimum achievable throughout the life cycle.

There should be full internalisation of pollution costs (zero polluters not paying). As a matter of coherence, zero pollution should also mean zero funding for polluting activities. In line with the EU Green Deal and Sustainable Europe Investment Plan, as well as with the 2020 State of the Energy Union report, fossil fuel subsidies must end. Subsidies to all other activities should be granted only under specific conditions that ensure a minimum level of environmental protection, consistent with the goals of the Zero Pollution Action Plan. Not only this requires a systematic check of compliance of activities with EU environmental laws within state aid control, but also a broader assessment of the harmful impacts of activities when subsidies are allocated, in line with Article 11 TFEU and Article 37 Charter of Fundamental Rights. Subsidies or state aid supporting the production of substances that are known to be prohibited by a certain date should not be allowed. An activity should also not be eligible to subsidies or state aid when there are less harmful alternatives. When that is not the case, the beneficiary shall at least guarantee sufficient safeguards to minimise its negative environmental impact to the minimum.

2 The road to zero pollution

2.1 Stronger implementation and enforcement

It will be essential to build strong implementation and enforcement mechanisms into the zero pollution action plan. Enforcement by civil society is essential to ensure full and timely implementation. To this end, the legislative initiatives under the Zero Pollution Action Plan should include explicit access to justice provisions.

2.2 Improved health and environment acquis

2.2.1 Air

ClientEarth welcomes the legislative initiatives announced in the EU Green Deal and roadmap relating to the revision of air quality standards in line of the World Health Organization guidelines, the strengthening of the provisions on monitoring, modelling and air quality plans and of the regulation of emissions from road transport and industrial facilities.

We note that the Commission has already carried out extensive fitness check procedures on relevant legislation and gathered a substantial knowledge base. The new legislative proposals should therefore move ahead without further delays.

Moreover, the inclusion of specific initiatives in the Zero Pollution Action Plan should not cause delay in their adoption. For instance, the Commission should proceed to strengthen provisions on monitoring, modelling and air quality plans in parallel to the adoption of the Zero Pollution Action Plan.

We also draw attention on the need to ensure consistency and synergies between the zero pollution action plan and all regulatory interventions that play a role in fighting air pollution, including:

- review of the National Emission Ceilings Directive 2016/2284 to establish emission reduction targets post-2030

- strengthening of relevant sectoral source regulations and phase-out internal combustion from road transport, non-road mobile machineries, domestic heating
- revision of the Industrial Emissions Directive, paying particular attention not only to primary emissions, but also to the impacts of industrial emissions on secondary PM2.5 pollution and long-range pollution
- regulation of indoor air pollution.

2.2.2 Water

The Zero Pollution Action plan should consider improved rules on pollution of surface and ground waters by mining activities; thermal pollution of rivers and water bodies by power plants (coal, nuclear, etc.); release of anoxic water (without oxygen) from the bottom of reservoirs for hydroelectric production, seriously affecting fish and river species; eutrophication of lakes and reservoirs; in marine and coastal waters, discharges from cleaning of ship fuel tanks and ballast.

Pollution of rivers and water by pharmaceutical products is of particular concern. All pharmaceutical products consumed by humans end up in rivers and water bodies through wastewater plants, which do not treat these substances. This affects in a lethal or sub-lethal way fishes, amphibians, insects, birds that drink the water. In some cases, there is no technology to eliminate pharmaceutical products in treatment plants. This must be taken into account in the assessment for the authorisation of such products.

2.2.3 Soil

The Biodiversity Strategy expressively states the intention to address soil degradation in a comprehensive way and help to fulfil EU and international commitments on land-degradation neutrality. To this end, the Commission will update the EU Soil Thematic Strategy in 2021 and look at these issues in the Zero Pollution Action Plan.¹

We welcome the Commission's commitment to address the problem of soil degradation and we highlight the need for consistency between initiatives. As both the EU Soil Thematic Strategy and the Zero Pollution Action Plan are expected to be adopted in 2021, coherent policy development is essential. The Zero Pollution Action Plan should clarify how these two frameworks will work together.

We underline that, in light of scientific data, limiting the use of fertilisers is essential for soil health. More generally, as reported by the European Environmental Agency in *The European environment — state and outlook 2020. Knowledge for transition to a sustainable Europe*², “on average across Europe, about a 40 % reduction in nitrogen inputs would be needed to prevent [the widespread] exceedance”. The Farm to Fork Strategy has set (non-binding) reduction targets to reduce the use of fertilisers by at least 20% by 2030³. However, it is not clear yet how this will be implemented at national level and how progresses in this regard will be monitored. The Zero Pollution Action Plan should add clarity on this point and reiterate such an ambitious commitment.

¹ Biodiversity Strategy (COM(2020)380), p. 9.

²The European environment — state and outlook 2020. Knowledge for transition to a sustainable Europe, p. 129. Available at: <https://www.eea.europa.eu/publications/soer-2020/#page=113> (last access 27th October 2020)

³ Farm to Fork Strategy (COM(2020)381), p. 7.

Moreover, the Zero Pollution Action plan should complement the initiative to develop an integrated nutrient management action plan to address nutrient pollution at source, announced in the Farm to Fork Strategy.

We also stress that the CAP should be an essential tool for soil protection. The CAP should not only establish strict soil protection requirements for farmers receiving subsidies, but also allocate additional resources to those farmers that engage in environmentally positive farming practices, both through eco-schemes and rural development funding. However, the CAP currently under negotiations reiterates a “business as usual approach”, disregarding the protection of climate and biodiversity. A weak CAP will work against the objectives of the Zero Pollution Action Plan, endangering the ambition of the European Green Deal as a whole.

2.3 Improved governance of pollution policies

ClientEarth welcomes the intention to address the international aspects of the EU’s zero pollution ambition such as diplomacy, trade policy, development support.

The EU must ensure we do not externalise our pollution problems to other regions of the world. In this regard, the EU initiative on mandatory due diligence will be essential. By establishing binding rules that require companies operating on the internal market to identify and prevent the negative impact of their operations and value chains, the EU can help tackling environmental adverse impacts globally and ensuring products that are placed on the EU market are sustainably sourced and produced.

3 The role of science in fighting pollution

It is important that expert advice plays an independent, transparent and meaningful role in the setting and reviewing of targets established under the Zero Pollution Action Plan.

For instance, the World Health Organization’s (WHO) Global Air Quality Guidelines are the fundamental reference to define what are safe levels of air quality for health protection. However, the update cycle of the WHO guidelines takes several years (the last update was in 2005 and the revised guidelines are expected to be published in 2021). It will be essential for the EU to be able to receive more timely advice on new scientific developments. The Zero Pollution Action Plan could create a framework to systematise previous experiences (such as the REVIHAAP and HRAPIE projects).

When it comes to soil pollution, a set of harmonised indicators to measure soil health across the EU is missing. There are numerous scientific contributions, but each Member State adopts a different methodology, resulting in difficulties for comparisons and for integrated assessment across the EU. The Zero Pollution Action Plans could establish coordinated actions with Horizon funding, in order to overcome the current scattered approach.

The Commission should consider the establishment of an independent committee of experts that would periodically review existing evidence on impacts of pollution on human health and ecosystems. It should be ensured that advice will be published in a timely way and include a requirement for the Commission to explain how the advice received will be treated.