

Air Quality Legislation

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Introduction to ClientEarth

ClientEarth is a non-profit environmental law organisation

We use law, science and policy to tackle key environmental challenges

We work on climate change, energy, environmental justice, biodiversity, forests and human health

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- 02** Case law of the CJEU on the right to clean air
- 03** The right to clean air before national courts

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Part 1

EU Air Quality Legislation

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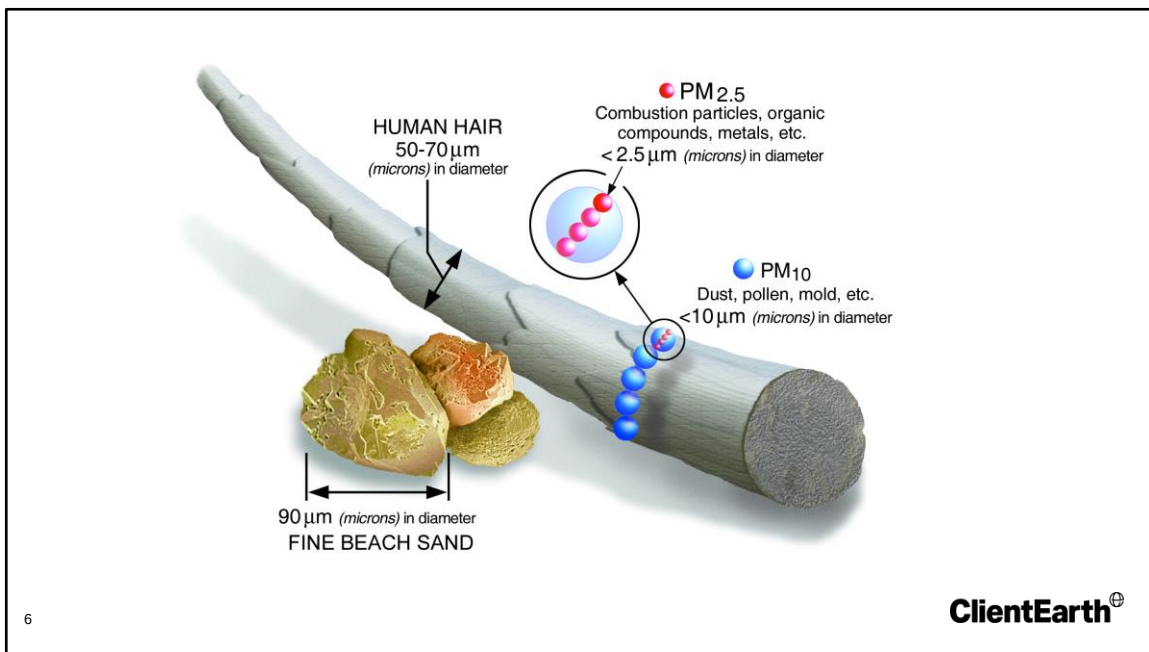
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“Air pollution is the world’s largest single environmental health risk” (WHO, 2014)



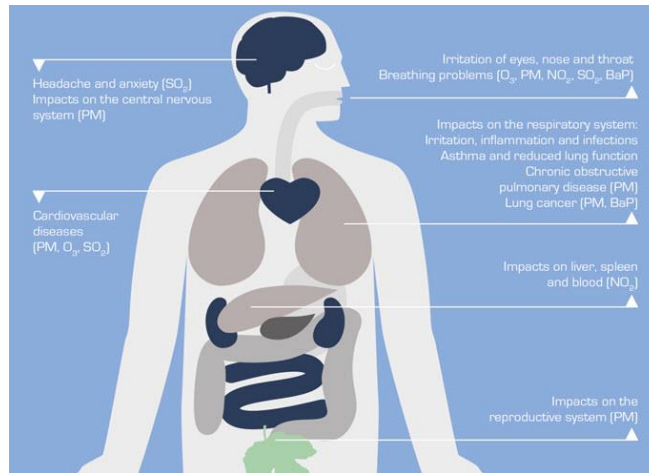
Lancet Commission: an estimated 6.5 million global deaths associated with exposure to air pollution in 2012 alone

More than 90% of the world’s children breathe toxic air every day



These small particles enter in our body and can affect virtually every organ, as shown in the next figure

Impact of pollution on health



EU air Pollution laws

National Emission Ceilings Total caps

The NEC Directive sets national emission limits for a number of harmful air pollutants. These 'ceilings' limit the total amount of air pollution which can be emitted by each Member State every year.

AGRICULTURE

The EU lacks comprehensive policy to prevent air pollution from agriculture. Only large poultry and pig husbandry are regulated through the Industrial Emissions Directive (IED), which is responsible for 80% of total EU ammonia emissions. Emissions remain unaddressed.

INTERNATIONAL SHIPPING

Standards to limit the sulphur content of marine fuel in the EU do exist but all the vessels that EU relies heavily on standards adopted by the International Maritime Organisation (IMO). These standards are either too weak or simply not properly implemented. Emissions from international shipping are not covered by the NEC Directive.

ROAD TRANSPORT

Emissions from road transport are regulated through 'Euro' standards for cars, vans and heavy-duty vehicles. EU type approval rules are currently being updated and 'Real Driving Emissions test procedure' (RDE) being developed to better reflect on-the-road emissions.

CONSTRUCTION MACHINES

The Regulation on Non-Road Mobile Machinery (NRMM) addresses emissions from construction machines involved in construction machines, tractors, locomotives, and inland waterway vessels. It defines emission limits and lays down the procedures engine manufacturers have to follow to be allowed to sell their engines in the EU market.

LARGE INDUSTRY

Energy generation, the production of metals, minerals and chemicals and waste management are addressed through the Industrial Emissions Directive (IED). Installations must be granted permits based on 'Best Available Technique' (BAT) which are described in so-called BAT Reference Documents (BREFs).

SMALLER INDUSTRY

Bakers, heaters, engines and turbines used for electricity generation, residential heating and cooling, and heating and steam for industrial processes are addressed through the Medium Combustion Plant (MCP) Directive. It sets emission limits which are much less stringent than what is technically feasible.

RESIDENTIAL HEATING

Air pollution from domestic heating boilers and stoves is addressed by the Ecodesign implementing regulations which set rules for the marketing and use of energy-using products. The current emission limits set for boilers and stoves are very loose compared to what is technically feasible, they will also only apply to future installations from 2020 onwards.

SOLVENTS

Products containing solvents such as paints, varnishes, disinfectants and nail polish are responsible for emissions of volatile organic compounds (VOC) which are precursors of ground-level ozone. Emission limits for paints and varnishes are set in the 2004 Paints Directive. VOC emissions from other products are not addressed by any EU legislation.

Ambient air quality

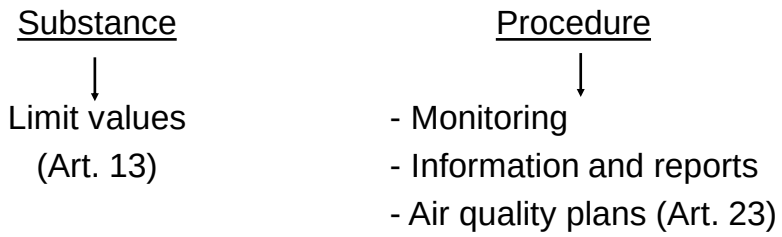
These rules ensure a minimum quality for the air we breathe. Member States must measure air pollution levels and comply with concentration limits for a number of harmful pollutants. When air quality levels are breached, air quality plans must be developed to address the problem.

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Right to clean air The theory



Directive 2008/50/EC on Ambient Air Quality



Objectives for air quality

Limit values

Concentration level fixed on the basis of scientific knowledge to be attained within deadline and **not to be exceeded once attained**.

If exceedance, compliance must be achieved in the shortest time possible.

Target values

Concentration level to be attained where possible.

If exceedance, authorities shall take all necessary measures not entailing disproportionate costs.

Limit values (art. 13)

Pollutant	Obligation	Time period	Compliance deadline	Permitted annual exceedances
Nitrogen dioxide (NO₂)	Hourly limit value of 200 µg/m ³	1 hour	1/1/2010 (possible extension to latest 1/1/2015)	No more than 18
	Annual mean limit value of 40 µg/m ³	Calendar year	1/1/2010 (possible extension to latest 1/1/2015)	n/a
Coarse particulate matter (PM₁₀)	Daily limit value of 50 µg/m ³	24 hours	1/1/2005 (possible extension to 11/6/2011)	No more than 35
	Annual mean limit value of 40 µg/m ³	Calendar year	1/1/2005 (possible extension to 11/6/2011)	n/a
Fine particle (PM_{2.5})	Annual mean limit value of 25 µg/m ³	Calendar year	1/1/2015	n/a

Scientific knowledge and legal standards

Pollutant	WHO	EU
PM _{2.5}	10 µg/m ³ annual mean	25 µg/m ³ annual mean
PM ₁₀	20 µg/m ³ annual mean	40 µg/m ³ annual mean
NO ₂	40 µg/m ³ annual mean	40 µg/m ³ annual mean

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Next slide is about the procedural part of the Directive: what steps should governments take to improve air quality?

Air quality plans (art. 23)

OBLIGATION OF RESULT:

*“In the event of exceedances of those limit values for which the attainment deadline is already expired, the air quality plans shall set out **appropriate measures, so that the exceedance period can be kept as short as possible.**”*

What is “as soon as possible”?

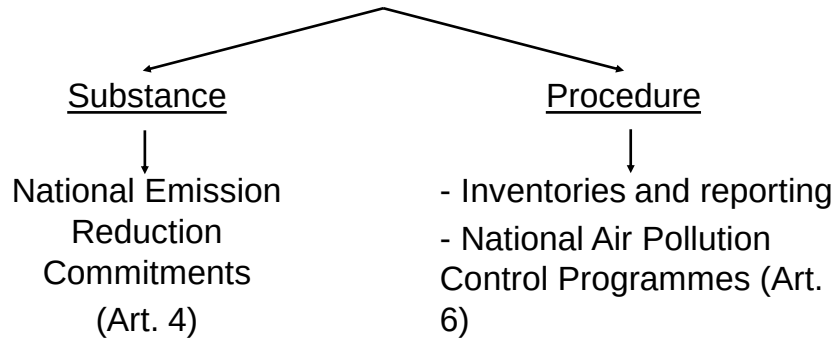
Minimum requirements for air quality plans (Annex XV, Part A, Directive 2008/50/EC):

1. identification of possible measures to improve air quality (point 6(b))
2. detailed description of measures adopted in the plan (point 8(a))
3. timetable for implementation of each measure (point 8(b))
4. assessment of the estimated impact of each measure and of the whole plan, including the identification of the expected compliance date (point 8(c))

Air quality monitoring

- Assessment regime: fixed monitoring stations, modelling, indicative measurements and objective estimation
- Minimum number of stations: based on pollution levels and size of population exposed (Annex V)
- Location of monitoring stations: areas where the highest concentrations occur (Annex III)

Directive 2016/2284/EU on the reduction of national emissions of certain atmospheric pollutants



National Emission Reduction Commitments (NERC)

National emission reduction commitments (Article 4)

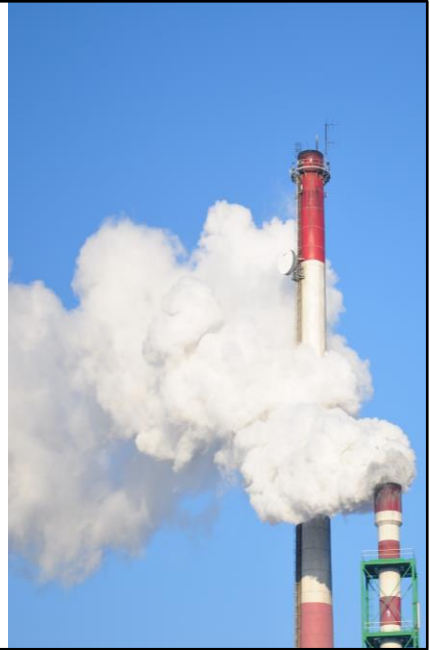
“1. Member States shall, as a minimum, limit their annual anthropogenic emissions of sulphur dioxide, nitrogen oxides, non-methane volatile organic compounds, ammonia and fine particulate matter in accordance with the national emission reduction commitments applicable from 2020 to 2029 and from 2030 onwards, as laid down in Annex II.”

Air pollutants covered

1. Sulphur dioxide (SO_2)
2. Nitrogen oxides (NO_x)
3. Non-methane volatile organic compounds (NMVOC)
4. Ammonia (NH_3)
5. Fine particulate matter ($\text{PM}_{2.5}$)

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Image: pexels.com



ANNEX II

NATIONAL EMISSION REDUCTION COMMITMENTS

Table A

Emission reduction commitments for sulphur dioxide (SO₂), nitrogen oxides (NO_x) and non-methane volatile organic compounds (NMVOC). The reduction commitments have the year 2005 as base year, and for road transport, apply to emissions calculated on the basis of fuels sold (*).

Member State	SO ₂ reduction compared with 2005		NO _x reduction compared with 2005		NMVOC reduction compared with 2005	
	For any year from 2020 to 2029	For any year from 2030	For any year from 2020 to 2029	For any year from 2030	For any year from 2020 to 2029	For any year from 2030
Belgium	43 %	66 %	41 %	59 %	21 %	35 %
Bulgaria	78 %	88 %	41 %	58 %	21 %	42 %
Czech Republic	45 %	66 %	35 %	64 %	18 %	50 %
Denmark	35 %	59 %	56 %	68 %	35 %	37 %
Germany	21 %	58 %	39 %	65 %	13 %	28 %

Table B

Emission reduction commitments for ammonia (NH₃) and fine particulate matter (PM_{2.5}). The reduction commitments have the year 2005 as base year, and for road transport, apply to emissions calculated on the basis of fuels sold (*).

Member State	NH ₃ reduction compared with 2005			PM _{2.5} reduction compared with 2005		
	For any year from 2020 to 2029		For any year from 2030	For any year from 2020 to 2029		For any year from 2030
Belgium	2 %		13 %	20 %		39 %
Bulgaria	3 %		12 %	20 %		41 %
Czech Republic	7 %		22 %	17 %		60 %
Denmark	24 %		24 %	33 %		55 %
Germany	5 %		29 %	26 %		43 %

Indicative 2025 target

Indicative 2025 target determined by **linear reduction trajectory** between emission reduction commitments for 2020 and emission reduction commitments for 2030

Member states may follow **a non-linear reduction trajectory**, if economically or technically more efficient. BUT **duty to give reasons** in the national air pollution control programmes

National Air Pollution Control Programmes (NAPCP)

NAPCPs (Article 6)

- Member States shall draw up, adopt and implement national air pollution control programmes in order to **limit their emissions in accordance with their emission reduction commitments**
- Key tool to ensure attainment of 2020 and 2030 targets
- Obligation to consult public on draft NAPCPs

Minimum requirements (Annex III)

- a. Air quality policy framework in the MS
- b. Policy options considered to achieve NERCs and impact assessment
- c. Measures and policies adopted, including:
 - i. timetable for adoption, implementation and review
 - ii. competent authorities for implementation
- d. Reasons for any flexibilities and/or non-linear trajectory
- e. Assessment of coherence with other policies (eg AQP, NECP)

The right to clean air the reality

Image: Jacek Harcko

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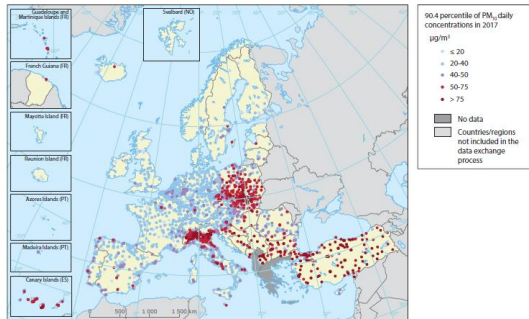
Air quality in Europe — 2019 report

ISSN 1577-8449

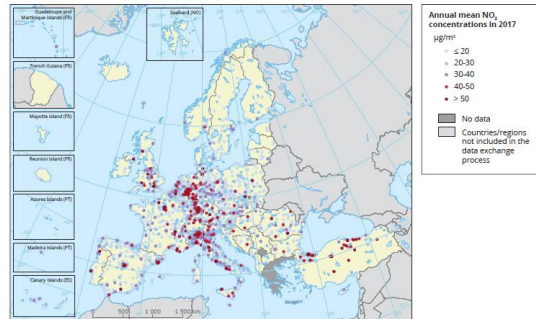


Widespread exceedances of limit values

PM₁₀ exceedances: often linked to fuel combustion (heating, transport...)



NO₂ exceedances: often linked to traffic (diesel), in more than 130 cities in the EU



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130 cities across 16 of the 28 EU member states.

Almost all EU cities have issues with nitrogen dioxide (NO₂) caused mainly by diesel vehicles in cities.

Mention dieselgate

Commission 2020 implementation report on the NEC Directive

Press release | 26 June 2020 | Brussels

Air pollution: Most EU Member States not on track to reduce air pollution and its related health impacts by 2030

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The assessment of Member States' first programmes of measures to control air emissions finds that the implementation of the [new European clean air rules](#) needs improvement. Member States need to step up efforts across all sectors to make sure their citizens can breathe clean air, preventing respiratory diseases and premature death caused by breathing polluted air.

Health impacts in Europe

Table 10.1 Premature deaths attributable to PM_{2.5}, NO₂ and O₃ exposure in 41 European countries and the EU-28, 2016

Country	Population (1 000)	PM _{2.5}		NO ₂		O ₃	
		Actual mean (1)	Premature deaths (1)	Actual mean (1)	Premature deaths (1)	SDMOB (1)	Premature deaths (1)
Austria	8 700	120	5 300	18.9	1 000	4 321	270
Belgium	11 211	127	7 600	21.7	1 000	2 203	180
Bulgaria	7 104	22.9	10 100	19.8	1 100	3 847	280
Croatia	4 191	104	5 300	15.2	200	4 996	200
Cyprus	1 184	137	1 800	24.0	240	1 613	100
Czechia	10 104	104	6 000	15.2	240	2 400	240
Denmark	5 707	92	2 700	10.4	70	3 700	100
Estonia	1 210	50	1 500	7.8	200	1 500	100
Finland	5 407	11	1 100	7.8	200	1 500	100
France	64 977	109	10 900	10.9	1 000	4 321	270
Germany	82 170	127	7 600	21.7	1 000	2 203	180
Greece	12 704	127	7 600	21.7	1 000	2 203	180
Hungary	10 104	104	6 000	15.2	240	2 400	240
Ireland	4 191	104	5 300	15.2	200	4 996	200
Italy	60 104	104	6 000	15.2	240	2 400	240
Lithuania	3 104	104	5 300	15.2	200	4 996	200
Latvia	2 104	104	5 300	15.2	200	4 996	200
Malta	419	104	5 300	15.2	200	4 996	200
Netherlands	16 104	104	6 000	15.2	240	2 400	240
Norway	5 104	104	5 300	15.2	200	4 996	200
Poland	38 104	104	6 000	15.2	240	2 400	240
Portugal	10 104	104	6 000	15.2	240	2 400	240
Romania	21 104	104	6 000	15.2	240	2 400	240
Slovakia	5 104	104	5 300	15.2	200	4 996	200
Slovenia	2 104	104	5 300	15.2	200	4 996	200
Spain	45 104	104	6 000	15.2	240	2 400	240
Sweden	9 104	104	5 300	15.2	200	4 996	200
Switzerland	8 104	104	5 300	15.2	200	4 996	200
Turkey	74 104	104	6 000	15.2	240	2 400	240
Ukraine	45 104	104	6 000	15.2	240	2 400	240
United Kingdom	63 104	104	6 000	15.2	240	2 400	240
EU-28	506 104	104	6 000	15.2	240	2 400	240
Total	506 104	104	6 000	15.2	240	2 400	240

Estimated 374,000 premature deaths each year in the EU from exposure to PM_{2.5}

Estimated 68,000 premature deaths each year in the EU from exposure to NO₂

Next slide on the key drivers of the pollution problems

Quiz session

Question 1

Air quality limit values describe:

- a) emission quantities which a specific emitter may not exceed
- b) recommended maximum concentrations of a pollutant in the air to be attained where possible, adopting measures not entailing disproportionate costs
- c) maximum concentrations of a pollutant in the air to be attained within a given deadline and not to be exceeded once attained

Question 2

Air quality plans:

- a. must ensure compliance with limit values, setting out appropriate measures, so that the exceedance period is kept as short as possible
- b. are routine air quality management tools to ensure gradual improvements in air quality over the long term
- c. may be adopted by Member States, where requested by the Commission



Case C-237/07 – *Janecek*

- **Standing** before courts to request adoption of short-term action plans under Directive 96/62
- **Limits on the discretion** of authorities → judicial scrutiny on measures and policies

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Limits – (1) **gradual** return to a level below limit values
(2) **balance** which must be maintained between air quality objective and the various opposing public and private interests

Case C-237/07 – Janecek

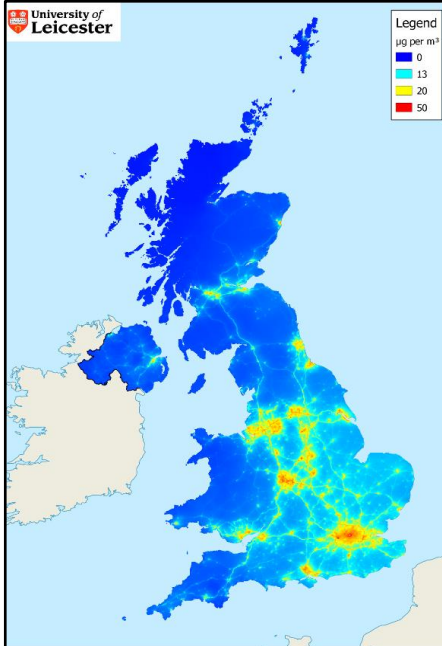
Standing of individuals to request adoption of short-term action plans under Directive 96/62:

“[...] the natural or legal persons directly concerned by a risk that the limit values or alert thresholds may be exceeded must be in a position to require the competent authorities to draw up an action plan where such a risk exists, if necessary by bringing an action before the competent courts.” [para 39]

Case C-237/07 – Janecek

Intensity of review of short-term action plans under Directive 96/62:

“while the Member States thus have a discretion, Article 7(3) of Directive 96/62 includes limits on the exercise of that discretion which may be relied upon before the national courts [...], relating to the adequacy of the measures which must be included in the action plan with the aim of reducing the risk of the limit values and/or alert thresholds being exceeded and the duration of such an occurrence, taking into account the balance which must be maintained between that objective and the various opposing public and private interests” [para 46]



Case C-404/13 – *ClientEarth*

- Standing of individuals and NGOs under Directive 2008/50/EC
- Key role of national courts
- Discretion of authorities very narrow → plans must achieve compliance as soon as possible

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Image: University of Leicester

Case C-404/13 – ClientEarth

Standing of individuals and NGOs:

“the natural or legal persons directly concerned by the limit values being exceeded ... must be in a position to require the competent authorities, if necessary by bringing an action before the courts having jurisdiction, to establish an air quality plan which complies with the second subparagraph of Article 23(1) of Directive 2008/50” [para 56]

Case C-404/13 – ClientEarth

Review of Air Quality Plans (Art. 23 Directive 2008/50):

*“Member States must take **all the measures necessary to secure compliance**” and are not allowed “to defer, as they wish, implementation of those measures” [para 31]*

*“As regards **the content of the plan**, it follows from the second subparagraph of Article 23(1) of Directive 2008/50 that, while Member States have a degree of discretion in deciding which measures to adopt, **those measures must, in any event, ensure that the period during which the limit values are exceeded is as short as possible**” [para 57]*

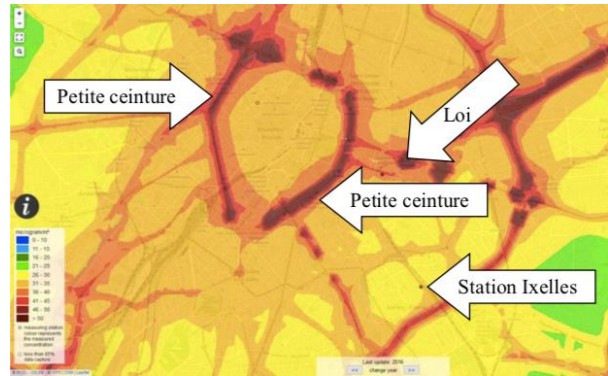
Case C-404/13 – ClientEarth

Role of national courts and remedies:

“where a Member State has failed to comply with the requirements of the second subparagraph of Article 13(1) of Directive 2008/50 [...], it is for the national court having jurisdiction, should a case be brought before it, to take, with regard to the national authority, any necessary measure, such as an order in the appropriate terms, so that the authority establishes the plan required by the directive in accordance with the conditions laid down by the latter” [para 58]

Case C-723/17 – Craeynest

- Standing to challenge location of **monitoring stations**
- National courts must carry out **intense review** of administrative decisions (≠ deference to “expert decisions of authorities”)



Case C-723/17 – Craeynest

Rules on location of air quality monitoring stations and standing:

*“42. Some of the provisions of Directive 2008/50 [on air quality monitoring] contain **clear, precise and unconditional obligations, which means that they can be invoked by individuals against the State.***

43. This is the case, in particular, with regard to the obligation to establish sampling points in such a way that they provide information on the pollution of the most polluted locations [...].”

Case C-723/17 – Craeynest

Intensity of review of scientifically complex assessments:

*“in order to determine the **rigour of judicial review** of national decisions adopted pursuant to an act of EU law, it is necessary to **take into account the purpose of the act** and to ensure that its effectiveness is not undermined” [para 46]*

Air Quality Directive protects fundamental rights, including:

- **high level of environmental protection, precautionary principle and principle of prevention** required under Article 3(3) TEU and Article 191 (1) and (2) TFEU [see para 33]
- **right to life**, under Article 2(1) Charter of Fundamental Rights [see Opinion AG Kokott in Case C-723/17, para 53]

Case C-723/17 – Craeynest

Reversal of burden of proof:

- “authorities are required to base their decisions on *sound scientific data* and, as set out in Section D of Annex III to Directive 2008/50, to prepare comprehensive documentation that includes *evidence supporting the choice* of the location of all monitoring sites” [para 51]
- Opinion of AG Kokott [para 64]:
 - it is for the competent authorities to convince the courts by presenting substantiated arguments
 - the other party can counter such claims with its own scientifically substantiated arguments
 - the court can appoint independent experts



Case C-752/18 – *Deutsche Umwelthilfe*

- Enforcement of rulings in air quality matters
- Fundamental **right to an effective remedy**, procedural obstacles and role of national courts
- Possibility (and limits) of **coercive measures**

Governor Markus Soeder

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Governor Markus Soeder

Case C-752/18 – *Deutsche Umwelthilfe*

Obligation to provide effective remedies - principles:

- Procedural autonomy + principles of equivalence and effectiveness
- Fundamental right to effective remedy:
 - Article 47 Charter Fundamental Rights
 - Article 9(4) Aarhus Convention
 - Article 6(1) European Convention of Human Rights
- Relevance of interests protected by Air Quality Directive (human health)

Case C-752/18 – *Deutsche Umwelthilfe*

Duty of national courts to use primacy of EU law to overcome procedural obstacles:

- “ascertain, *taking the whole body of domestic law into consideration [...] whether it can arrive at an interpretation of domestic law that would enable it to apply effective coercive measures in order to ensure that the public authorities comply with a judgment*” [para 40]
 - eg high financial penalties that are repeated at short intervals until full compliance
- the principle of primacy of EU law can lead “to the *national court applying procedural rules and adopting measures in situations not provided for by national law*” [AG Opinion, para 60]



Commission's infringements

- Key cases:
 - C-68/11 *Commission v Italy*,
 - C-488/15 *Commission v Bulgaria*
 - C-336/16 *Commission v Poland*
 - C-636/18 *Commission v France*
- Obligation of result
- Not admissible to justify breach for technical, financial or socio-economic difficulties

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Case C-68/11 – *Commission v Italy*

- Obligation of result:
 - *“it is irrelevant whether the failure to fulfil obligations is the result of intention or negligence on the part of the Member State responsible, or of technical difficulties encountered by it”* [para 63]
- The following defences cannot be accepted:
 - technical difficulties
 - financial difficulties
 - unfavourable weather conditions

Case C-488/15 – *Commission v Bulgaria*

- Finding of systemic and continuous breach of the Air Quality Directive
- Argument based on “*socio-economic situation cannot be accepted*” [para 77]
- Case-by-case analysis and strike “*balance between the aim of minimising the risk of pollution and the various opposing public and private interests*” [para 106]

Opinion of AG Kokott in Case C-488/15 – *Commission v Bulgaria*

- Balancing exercise: “the high importance of ambient air quality for the protection of life and health *leaves only very little room for consideration of other interests*” [para 96]
- “the longer the exceedances persist, the more they show how effective — or ineffective — the measures already taken to improve air quality were” [para 104]
- Reversal of burden of proof [para 107]
- Information required by Annex XV (on measures, timetable, impact assessment, compliance date) is central to assess adequacy of air quality plans [para 113]

“As short as possible” and balancing of other interests

- **Structural changes** needed to achieve compliance cannot be considered exceptional circumstances and are not such as to exclude the possibility of setting shorter compliance dates than 10 or 15 years after the start of the exceedances
- **Case C-336/16 – *Commission v Poland* [para 99-101]**: socio-economic costs and financial challenge of replacing individual and collective boilers across Poland with more efficient equipment
- **Case C-636/18 – *Commission v France* [para 83-85]**: significant financial investment and risk of backlash (“*gilets jaunes*”) in order to modernise vehicle fleet and change mobility infrastructure

Case law on NEC Directive

- Binding obligation of Member States to take “*all the measures necessary*” to achieve the 2020 and 2030 NERCs
 - refrain from adopting any measures liable seriously to compromise the attainment of the NERC (body of policies and measures ≠ individual decision)
 - obligation to adopt adequate national air pollution control programme
 - Joined Cases C-165/09 and C-167/09 *Stichting Natuur en Milieu* [78; 84-87]

Content of NAPCPs and judicial review

- Member States have “*wide flexibility in selecting the specific initiatives to be implemented*”
- However, there are **limits on the exercise of such discretion** → the NAPCP, as a whole, must be appropriate to reduce emissions in line with NERCs
- Limits as to appropriateness of NAPCPs can be relied upon before the national courts
 - Recital 27 of NEC Directive
 - Joined Cases C-165/09 and C-167/09 *Stichting Natuur en Milieu* [101-103]

The right to clean air
before national courts



Legal battle for clean air in the UK



Image: Sandra Mode (Unsplash)

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2010	NO ₂ limit value in force: 40 out of 43 zones in breach
2011	ClientEarth launches first legal challenge
May 2013	Supreme Court refers questions to the CJEU
Nov 2014	CJEU judgment – establishes the right to clean air
Apr 2015	First win: <u>Supreme Court orders new Air Quality Plan</u>
Dec 2015	2015 Air Quality Plan published – commits 5 cities and London to introduce clean air zones
Nov 2016	Second win: <u>High Court orders new Air Quality Plan</u>
Apr 2017	Third win: High Court dismisses application for time extension
Jul 2017	2017 Air Quality Plan published – requires individual plans from 23 local authorities
Feb 2018	Fourth win: <u>High court orders supplemental Air Quality Plan</u>
Oct 2018	2018 Supplemental Air Quality Plan published – requires proposed measures from 33 additional local authorities



Mr Justice Mitting

The High Court, 2011

*“...[t]he means of enforcing...lie elsewhere”,
and a mandatory order would “raise serious
political and economic questions which are
not for this court”*

*ClientEarth (No.1) [2011] EWHC 3623 (Admin) §15
and §16*

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Lord Carnwath

The UK Supreme Court, 2015

"The new Government [...] should be left in no doubt as to the need for immediate action to address this issue. The only realistic way to achieve this is a mandatory order requiring new plans complying with article 23(1) to be prepared within a defined timetable."

ClientEarth (No.1) [2015] UKSC 28, §31

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Mr Justice Garnham

The High Court, 2016

“the Secretary of State fell into error ... in fixing on a projected compliance date of 2020 (and 2025 for London)” and “by adopting too optimistic a model for future emissions”

ClientEarth (No.2) [2016] EWHC 2740 (Admin), §95

ClientEarth [⊕]

Fonction de surveillance (watch dog) des ONG

ClientEarth (No.2): standard of review

“...the Secretary of State must aim to achieve compliance by the soonest date possible

[...] choose a route to that objective which reduces exposure as quickly as possible, and

[...] take steps which mean meeting the value limits is not just possible, but likely”

ClientEarth (No.2) [2016] EWHC 2740 (Admin), §95

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ClientEarth (No.2): standard of review



"...I reject any suggestion that the state can have any regard to cost in fixing the target date for compliance or in determining the route by which the compliance can be achieved [...] the determining consideration has to be the efficacy of the measure in question and not their cost"

ClientEarth (No.2) [2016] EWHC 2740 (Admin), §50

ClientEarth⁺

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Apr 2015	First win: <u>Supreme Court orders new Air Quality Plan</u>
Dec 2015	2015 Air Quality Plan published – commits 5 cities and London to introduce clean air zones
Nov 2016	Second win: <u>High Court orders new Air Quality Plan</u>
Apr 2017	Third win: High Court govt dismisses application for time extension
Jul 2017	2017 Air Quality Plan published – requires individual plans from 23 local authorities
Feb 2018	Fourth win: <u>High court orders supplemental Air Quality Plan</u>
Oct 2018	2018 Supplemental Air Quality Plan published – requires proposed measures from 33 additional local authorities

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The High Court, 2018

“The Court itself cannot realistically monitor the performance by the government [...], but it can adapt its procedure to provide a quick, efficient and low cost means of enabling the current claimant, which has acted as a valuable monitor of the government's efforts to improve air quality to date, to bring the matter back before the Court...”

ClientEarth (No.3) [2018] EWHC 398 (Admin), Judgment on remedies, §14

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ClientEarth (No.3): liberty to apply

“In the particular circumstances of this case, where we have an expert claimant, which to date has advanced only what are properly arguable claims, and which has demonstrated both high level expertise, legal and technical, and a responsible attitude towards making a claim, it is appropriate, in my judgment, to grant this extended liberty to apply. I acknowledge that this is a wholly exception course for the Court to take...”

ClientEarth (No.3) [2018] EWHC 398 (Admin), Judgment on remedies, §16

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Where has all this got us to?

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Clean Air Zones (CAZ) across the UK

- Newcastle:** Class C CAZ
- Leeds:** Class B CAZ
- Manchester:** ?Class B/C CAZ?
- Sheffield:** Class C CAZ
- Bradford:** ?Class C CAZ?
- Birmingham:** Class D CAZ
- Bristol:** ?Diesel ban?
- Bath:** Class C CAZ
- London:** Ultra Low Emission Zone



MAYOR OF LONDON

CENTRAL LONDON ULTRA LOW EMISSION ZONE – SIX MONTH REPORT

October 2019

Ultra-low emission zone (ULEZ) in London reduced NO₂ pollution by 29% in the first three months of implementation



theguardian

High court rules UK government plans to tackle air pollution are illegal

EveningStandard.

Government plans to cut London's deadly pollution levels are not good enough, judge says

The Telegraph

High Court victory for air pollution campaigners in legal battle with Government

New Scientist

Court orders UK to take urgent action to reduce air pollution

Mail Online

Diesel owners face congestion charge to drive in 16 cities after ruling that the Government is not doing enough to meet EU air pollution targets

BBC

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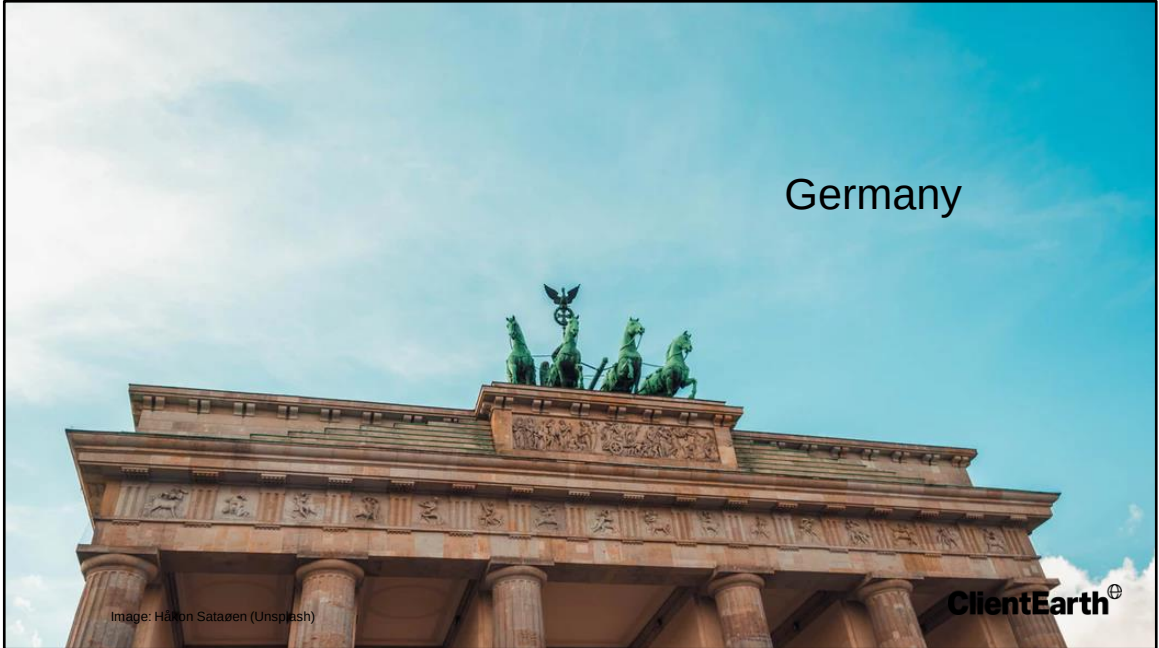
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NEWS

Green group wins air pollution court battle



Germany



Düsseldorf, September 2016



Image: Nokidoc

ClientEarth

Munich, February 2017



Image: Robert Mehlmann (ClientEarth)

ClientEarth

Stuttgart, September 2017





Political pressure to stop court orders

The Federal government will do
*“everything in our powers to make
sure there won’t be such bans”*

Angela Merkel, Federal Chancellor, 5
septembre 2017

ClientEarth 

Federal Administrative Court in Leipzig,
February 2018



Domino effect

- Legal actions targeting 36 cities
- Court orders to restrict diesel in 12 cities

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Legal actions in 38 cities

12 cities forced to introduce restrictions on diesel vehicles: Aachen, Berlin, Bonn, Cologne, Darmstadt, Dusseldorf, Essen, Frankfurt, Gelsenkirchen, Hamburg, Munich, and Reutlingen

Impacts

- Recall 5.3 million diesel cars for software updates to cut emissions
- 2 billion euros clean air fund (250m euros from manufacturers)
- Levels of pollution improved twice as high in cities where there are court cases

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Between 2018 and 2019 alone, nitrogen dioxide (NO₂) levels reduced by an average of 4.2µg/m³ in cities where air quality litigation has been undertaken. Meanwhile, in cities where no action was taken, that average reduction stands at just 2.1µg/m³.

The New York Times

Germany's Car Capital Reels As Court Allows Ban on Cars

By KATRIN BENNHOLD

STUTTGART, Germany — The star of Daimler shines bright over Stuttgart. The giant illuminated emblem of its most famous car, the Mercedes, towers above the main train station, greeting visitors. It is visible for miles.

"As soon as you arrive," said Manfred Niess, a retired teacher and local environmental activist, "you know who rules here."

Now, though, Daimler and other automakers in Stuttgart are facing a startling new reality: It may soon be illegal for some to drive a Mercedes in this city, where the local soccer club plays in the Mercedes-Benz stadium.

On Tuesday, a German court ruled that Stuttgart, one of the country's most polluted cities, can ban diesel cars from driving in downtown areas to improve air quality. The ruling could ultimately lead to bans in a host of cities in Germany, a country with millions of diesel cars on the streets. Unlike in the United States, where diesel cars are the exception, in Germany roughly one in three passenger vehicles runs on diesel.

"It is the latest wake-up call for the German auto industry and German politicians," said

Continued on Page A6



The Diesel Delusion

Court Ruling Could Change Future of Mobility in Germany

THE WALL STREET JOURNAL.

Germany Paves Way for Diesel Ban, Dealing Blow to Auto Makers

Court allows major German cities to ban older diesel vehicles

Bloomberg

How a German Court Case Could Accelerate Diesel's End

The Washington Post

Germans love their cars. They also love the environment. A diesel ban is forcing them to choose.

ClientEarth [⊕]

Barriers to access to justice in Poland and Bulgaria



- Some of the worst air pollution in the world
- Some of the most ineffective air quality plans
- Very serious barriers to access to justice for citizens

Procedural obstacles in national laws...

- In Poland, air quality plans are local laws, not administrative decisions, subject to *lex specialis* for standing (article 90(1) of the Act of Provincial Self-Government)
- In Bulgaria, air quality plans are internal administrative acts
- In both countries, there is no easy route to challenge AQPs: claimants must demonstrate a violation of an individual, concrete and actual legal interest

...and barriers before the national courts

- Polish Supreme Administrative Court rejected a case in Silesia (File No. II OSK 3218/17, 23 January 2018)
- Bulgarian Supreme Administrative Court rejected cases in Sofia (ruling No. 13138 on 1 November 2017) and Plovdiv (ruling No. 16049 on 20 December 2018)
- Both courts **refused** to:
 - interpret/disapply national law in line with EU law
 - refer preliminary question to CJEU

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Follow-up

- Communications to the Aarhus Convention Compliance Committee concerning barriers to access to justice in Poland (Communication ACCC/C/2016/151) and Bulgaria (Communication ACCC/C/2018/161)
- Complaints to the EU Commission requesting start of infringement proceedings against Bulgaria and Poland lodged in February 2019

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Infringement

Access to justice in environmental matters: Commission calls on BULGARIA and POLAND to remove barriers to access to justice for citizens and environmental organisations in relation to air quality plans

The Commission is urging **Bulgaria** and **Poland** to remove barriers to access to justice in relation to air quality plans. Neither of the two countries has ensured that natural or legal persons directly concerned by exceedances of the air pollution limits under [Directive 2008/50/EC](#) on ambient air quality and cleaner air for Europe, are allowed to bring an action before the national courts. Environmental organisations and natural or legal persons in these two Member States are currently not allowed to challenge the consistency of an air quality plan and to require public authorities to establish air quality plans as the Directive requires.

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Conclusions

- Clear and binding EU rules on air quality, but widespread breaches many years after entry into force
- Litigation by individuals and NGOs is a key driver to ensure adequate action to fight pollution
- National courts have a key role to play to provide effective legal protection of human health and the environment

Thank you!

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Questions?



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