
ANALYSIS OF THE QUESTIONNAIRE:

TRENDS IN DOMESTIC AIR POLLUTION LITIGATION



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Background to the questionnaire and the summary report



Trends in domestic air pollution litigation



Significant measures in domestic laws





- 10 questions – 3 main pillars of EU law and domestic law
 - **Ambient Air Quality Directive (2008/50/EC Directive) and Directive 2004/107/EC**: implementation, infringement proceedings, domestic case-law, typical claimants, problems in enforcing judgments, withdrawal of air quality measures, sanctions
 - **Directive (EU) 2016/2284** on reduction of national emissions: implementation, infringement proceedings, national case-law
 - **Directive 2007/46/EC, Regulation (EC) No. 715/2007** on vehicle type approval rules: treatment of illegal shutdown devices, legal measures against manufacturers in breach of type approval rules, retrofitting, powers of domestic authorities, driving bans
 - **Domestic law**
- Input from 16 judge members of EUFJE
- Reflects on national reports and depicts current trends in domestic air pollution laws and adjudication, available on EUFJE's website

- exceedance in pollutants in the majority of States
- problems in putting the Directive into practice
 - country-specific problems (NO_x, PM₁₀, PM_{2,5})
 - country-specific sources of pollution (traffic, households, industry – electricity generation)
 - transboundary pollution (Cyprus, Denmark, Czech Republic)
 - serious deficiency in the monitoring network (Romania, Slovakia)





- majority of MSs do not enact stricter or complementary air quality standards
- infringement proceedings mostly relate to Directive 2008/50/EC (22 cases: 3 States: 0, 7 States: 2-3, 6 States: 1)
- Directive 2008/50/EC is the most heavily litigated also before domestic courts (12 cases)
- various legal proceedings are pending in defeat device litigation





- NGOs (INGOs)
 - blind spots of NGO-driven litigation (Prague vs. Silesia, adequate funding)
- municipalities (Ostrava, Madrid)
- traders' association
- ombudsperson (Hungary)
- scientific institutions (Prague's Václav Havel Airport)
- private persons – tort claims (France)





- Challenging the content of air quality plans
 - a preliminary issue: standing of NGOs – despite *Janecek* (C-237/07), standing was not granted (Poland, Hungary)
 - Air quality plans were found to be insufficient (Czech Republic, France, Romania, Slovakia, UK)
- Challenging the scientific bases of air quality plans (Belgium) - the role of citizen science projects
- Location of measurement points (The Netherlands, Belgium - *Craeynest*)
- Legality of diesel bans (Germany)
- Lawfulness of interfering with property rights (Romania)



- Challenging individual development projects that may cause exceedance of air quality standards
 - Estonia: individuals cannot challenge a project
 - Belgium: limit values be assessed in relation to a given zone, but not to a specific development project
 - Czech law: individuals may challenge the permits though the courts set a high bar for allowing such claims to prevail
 - UK: courts heard such claims, but found a wide discretion of permitting authorities (Heathrow Airport)
 - Dutch law: statutory requirement of ‘significant contribution to air pollution’ (with presumption of the lack of such contribution for certain development projects)



- Ensuring compliance with action-forcing judgments
 - Romania – limited toolkit for ensuring that adequate action is actually taken following a court order
 - France – penalty payment (EUR 10million) imposed on the State until proper execution of its judgment
 - UK – need for a flexible supervisory jurisdiction over claims of the plaintiff if the defendant was falling short in its compliance
 - Germany – diesel bans were not enacted despite the Federal Administrative Court’s judgment



Unsuccessful attempts at challenging air quality measures before courts:

- Low-emission zones (Brussels, Bucharest, Madrid)
- Diesel bans (Germany, Italy)
- Limits on the use of coal for household heating purposes (Poland)





Article 9 - Member States shall determine effective, proportionate and dissuasive penalties for infringements of national provisions adopted under the Directive

- most States: both administrative and criminal
- difference as to whether legal persons and public entities can be subject to criminal sanctions
- Liability of legal persons and public entities (Belgium, Spain)
- criminal liability of individuals (Romania)
- administrative (including public entities)



- Criminal proceedings against managers (Germany, Belgium)
- Administrative fines (Germany)
- Damage claims of buyers and consumer protection organizations (German, Spanish, Belgian courts)
- Claims of investors (Belgium)
- Contract law claims (UK)





- Constitutional right to a healthy environment (Czech Republic, France, Romania, Spain)
- Minimum distance requirements (Finland)
- Limiting idling times (Finland, UK)
- CO₂-tax on vehicles running with fossil fuels (survey of the European Automobile Manufacturers Association)





- Open questions: standing of individuals, enforceability of air quality plans
- Majority of jurisdictions are willing to review the adequacy of the content of air quality plans
- Remedy depends on national procedural and substantive law, technical complexity of cases
- Problems in ensuring compliance with judgments requiring timely and effective measures to be taken
- Reach of EU law depends on access to justice rights on the domestic level
- Ambitious air quality measures are routinely taken to domestic courts
- Matrix of heterogeneous actors, various normative bases and conflicting economic and legal interests



THANK YOU FOR YOUR KIND ATTENTION

Questions and remarks are
welcome at

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