

## Questionnaire on Air Pollution Law

### **I. Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe<sup>1</sup> and Directive 2004/107/EC of the European Parliament and of the Council of 15 December 2004 relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air<sup>2</sup>**

1. Have there been problems to fulfil the obligations, set out in these directives, *in practise*? Are there effective systems in place to ensure detection of possible non-compliance and relevant follow-up, including prosecution and adjudication?

According to an audit<sup>3</sup> performed by National Audit Office of Estonia concerning the years 2014-2016, Estonia has not had any problems related to the quality of ambient air regarding the most important pollutants (NO<sub>x</sub>, SO<sub>2</sub>, volatile organic compounds and fine particulate matter (PM<sub>2,5</sub>)). The level of critical pollutants has not exceeded limit values or been over the limits on more occasions than permitted. There have been some regional problems with less important pollutants (*i.e.* annual mean concentrations of benzo(a)pyren in Tartu and 1 hour mean concentration of H<sub>2</sub>S in Kohtla-Järve).

Ambient air monitoring is part of national environmental monitoring system. According to the aforementioned audit, the monitoring system meets the requirements of EU legislation. The system covers all primary pollutants. Secondary pollutants are monitored according to financial possibilities. Air monitoring data is available on the website [www.ohuseire.ee](http://www.ohuseire.ee). The website is easy to use, up to date and informative.

Two administrative authorities monitor the compliance of industrial installations with the air quality requirements – Environmental Board and Environmental Inspectorate. The latter carries out investigations in criminal cases. Environmental Board monitors air quality in regions that are exposed to several and cumulative effects. In case of exceedance of limit values, the Environmental Board conducts a compulsory action plan for reducing the emission levels of pollutants.

2. Are those directives properly implemented in your Member State? Have stricter or complementary air quality standards been introduced?

On January 1<sup>st</sup> 2017, new Atmospheric Air Protection Act<sup>4</sup> entered into force. According to the letter of explanation of the draft act, one of its main aims was to implement correctly the provisions of the directive 2008/50/EC<sup>5</sup>. Annex 1 of the letter of explanation contains a comparative statement according to which the new act complies fully with the provisions of the directive 2008/50/EC.

There has been some criticism against Atmospheric Air Protection Act, namely regarding permissions for new activities that could cause an exceedance of limit values. The act sets the

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<sup>1</sup> <http://data.europa.eu/eli/dir/2008/50/2015-09-18>

<sup>2</sup> <http://data.europa.eu/eli/dir/2004/107/2015-09-18>

<sup>3</sup> The results are available: <https://www.eurosai.org/en/databases/audits/Joint-Report-Air-Quality/> (4th of July 2020).

<sup>4</sup> <https://www.riigiteataja.ee/en/eli/505062020001/consolide> (4th of July 2020).

<sup>5</sup> <https://www.riigikogu.ee/tegevus/eelnoud/eelnou/97e97edc-3d7b-48b5-b603-371c6cdc2435> (4th of July 2020).

obligation to avoid such activities in areas where, under unfavourable weather conditions, the dispersion of pollutants released into the ambient air is limited due to natural reasons or as a result of human activity. The possessor of an emission source is required to apply additional measures for reducing the emissions of pollutants into the ambient air upon activities which are likely to result in exceedance of the air quality limit value. Therefore, the Atmospheric Air Protection Act enables to impose certain conditions on new activities that may cause the exceedance of limit values, but does not state a clear possibility to ban them<sup>6</sup>.

The provisions of both directive 2008/50/EC and 2004/107/EC have further been implemented by two regulations of the Minister of the Environment:

1) Regulation N° 84 “The Procedure for Air Quality Assessment”<sup>7</sup> (entry into force January the 1<sup>st</sup> 2017). Annex 1 of the letter of explanation of the draft regulation contains a comparative statement according to which the regulation complies fully with the provisions of the directives 2008/50/EC, 2004/107/EC and 2015/1480<sup>8</sup>.

2) Regulation N° 75 “Air Quality Limit Values and Target Values, Other Air Quality Limit Norms and Assessment Thresholds of Air Quality”<sup>9</sup> (entry into force January the 1<sup>st</sup> 2017).

In addition to the 13 priority pollutants regulated by EU air law, Estonia has imposed limit or target values for 25 other pollutants (see Regulation N° 75, Annex 1, table 3 “National air quality target values and limit values”).

### 3. Have EU infringement proceedings in relation to these directives been brought against your Member State?

Infringement cases against Estonia in relation to the directive 2008/50/EC<sup>10</sup>:

| <b>Infringement no</b> | <b>Infringement date</b> | <b>Type of decision</b>                   |
|------------------------|--------------------------|---|
| 20100459               | 29/09/2011               | Closing of the case                       |
| 20100459               | 16/06/2011               | Additional reasoned opinion Art. 258 TFEU |
| 20100459               | 24/11/2010               | Reasoned opinion Art. 258 TFEU            |
| 20100459               | 16/07/2010               | Formal notice Art. 258 TFEU               |

There have been no infringement cases against Estonia in relation to the directive 2004/107/EC.

### 4. Is there national case law in which these directives are relied upon and what are the most relevant subject areas (e.g. concerning adoption and content of air quality plans, access to relevant environmental information and public participation, etc.)?

N/A

#### a) Are there specific difficulties to enforce judgements in these cases? If yes, please explain in more detail.

N/A

<sup>6</sup> M. Oras, „Veekeskonna kaitse Riigikohtu poolt asjas 3-16-478 tehtud lahendi valguses”, Juridica 5/2019, p 357-258.

<sup>7</sup> <https://www.riigiteataja.ee/akt/108122017007> (4th of July 2020).

<sup>8</sup> <http://eelnuud.valitsus.ee/main/mount/docList/a11da881-489c-415e-89cd-a77451e3ad10#78tkTitG> (4th of July 2020).

<sup>9</sup> <https://www.riigiteataja.ee/akt/106032019012> (4th of July 2020).

<sup>10</sup> Source of information: European Commission database [https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement\\_decisions/?lang\\_code=en](https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/?lang_code=en) (4th of July 2020).

b) Who are the claimants in the different categories of cases (e.g. local authorities, non-governmental organisations, private persons)?

N/A

c) Is there case law, in which claimants demand the withdrawal of measures aimed at improving the air quality (e.g. annulment of ban of certain cars)?

N/A

d) With a view to the penalty clauses of Article 30 Directive 2008/50/EC and Article 9 of Directive 2004/107/EC:

- What type of penalties are applicable in your country to breaches of obligations deriving from these two directives? More specifically:

- Are the sanctions specifically stipulated in the transposing national legislation or are there sanctions of a general kind established in other legislation and applicable more widely?

- Are the sanctions directed explicitly or implicitly against competent authorities? Are the sanctions addressed to private natural and legal persons and/or economic operators?

- Are the sanctions of administrative or criminal nature or both? What is their range?

- Are the sanctions established as a function of obligations stemming from sources legislation? If so, how is that articulated in national law?

Atmospheric Air Protection Act establishes specific administrative fines, e.g. for

1) Failure to prepare or violation of requirements for preparation and implementation of action plan for reducing emissions of pollutants;

2) Activities without air pollution permit or violation of requirements of air pollution permit;

2) Exceeding the emission limit values of a stationary emission source.

Penal Code establishes general criminal sanctions for unlawful release of substances, energy or waste into the environment if it causes a danger to human life or health or a risk of significant damage to the quality of water, soil or ambient air, or to individuals of animal or plant species or parts thereof. This action is also punishable with criminal sanctions if it is caused due to negligence.

- Are there any case law statistics available? Or statistics on the application of penalties outside of court proceedings?

Environmental Inspectorate has published statistics<sup>11</sup> on the application of penalties for the infringement of Atmospheric Air Protection Act and its predecessor Ambient Air Protection Act<sup>12</sup> outside of court proceedings (administrative fines). It should be noted that the statistics do not show how many of the cases considered specifically the infringement of obligations deriving Directive 2008/50/EC or Directive 2004/107/EC.

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<sup>11</sup> <https://www.kki.ee/et/jarelevalve-statistika-0> (27th of July 2020).

<sup>12</sup> <https://www.riigiteataja.ee/en/eli/517062015007/consolide> (27th of July 2020).

| Year | N° of cases registered | N° of fines applied | Total sum of fines (EUR) |
|------|------------------------|---------------------|--------------------------|
| 2019 | 19                     | 7                   | 16 900                   |
| 2018 | 20                     | 12                  | 40 500                   |
| 2017 | 23                     | 12                  | 8 800                    |
| 2016 | 43                     | 37                  | 32 854                   |
| 2015 | 62                     | 49                  | 19 360                   |

## II. 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<sup>13</sup>

1. Is this directive properly implemented in your Member State? Have stricter emission reduction commitments been introduced? Has national legislation been adapted to meet the emission reduction commitments?

The directive has been implemented by Atmospheric Air Protection Act (the amendments from the directive (EU) 2016/2284 came into force on 1 July 2018). Most notable amendments are § 108 (National commitments for reduction of anthropogenic emissions of pollutants in the territory and economic zone of Estonia, national programme for reduction of emissions of certain air pollutants and reporting), § 108<sup>1</sup> (Flexibilities for compliance with national commitments for reduction of emissions) and § 108<sup>2</sup> (Notification of European Commission of implementation of flexibilities upon compliance with national emission reduction commitments).

National commitments for reduction of anthropogenic emissions of pollutants in the territory and economic zone of Estonia, and the terms for the performance thereof and exceptions, and the procedure for preparation of national summary reports of emissions of pollutants and projections of total emissions of pollutants are established by a regulation of the Government of the Republic. The regulation N° 49 “National obligations for the reduction of emissions of anthropogenic pollutants in the territory of Estonia and the economic zone, deadlines and exceptions for their fulfillment and reporting”<sup>14</sup> came into force on 1 July 2018. Its § 1 establishes the same emission reduction commitments as set for Estonia in Table B in directive (EU) 2016/2284. Section 4 of the regulation establishes the obligations such as preparation of national pollutant emission inventories, forecasts and informative inventory reports.

Minister of Environment established the state programme for the reduction of emissions of air pollutants<sup>15</sup> on 29 March 2019. Estonia has not introduced stricter goals than the directive obliges.

2. Have EU infringement proceedings in relation to this directive been brought against your Member State?

Estonia received a formal notice on 31 March 2017 for failure bring into force the laws, regulations and administrative provisions necessary to comply with Article 10(2) by 15 February 2017 (infringement number 20170224). The case was closed on 13 July 2017.

<sup>13</sup> <http://data.europa.eu/eli/dir/2016/2284/oj>.

<sup>14</sup> <https://www.riigiteataja.ee/akt/126062018028>.

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[https://ec.europa.eu/environment/air/pdf/reduction\\_napcp/EE%20final%20NAPCP%2029March19%20EN.pdf](https://ec.europa.eu/environment/air/pdf/reduction_napcp/EE%20final%20NAPCP%2029March19%20EN.pdf).

3. Is there national case law in which this directive is relied upon?

N/A

**III. Directive 2007/46/EC establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles<sup>16</sup> and Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information<sup>17</sup>**

1. How has your Member State implemented these EU vehicle type approval rules?

Directive 2007/46/EC has been implemented into six different Acts:

- Tourism Act<sup>18</sup>;
- Traffic Act<sup>19</sup>;
- regulation N° 37 “Conditions, requirements and procedure for the type approval, approval of individual vehicles and conversion of motor vehicles, motorcycles, mopeds and their trailers”<sup>20</sup>;
- regulation N° 25 “Technical and equipment requirements for motor vehicles and trailers of the Defense Forces and the Defense League and the procedure for checking compliance with technical requirements”<sup>21</sup>;
- regulation N° 73 “Environmental requirements for liquid fuels, sustainability criteria for biofuels, procedures for monitoring and reporting on the environmental performance of liquid fuels and methodology for determining greenhouse gas emission reductions from the use of biofuels and liquid biofuels”<sup>22</sup>;
- regulation N° 42 “Technical and equipment requirements for motor vehicles and their trailers”<sup>23</sup>.

Regulation (EC) No 715/2007 has been implemented into regulation “Environmental requirements for liquid fuels, sustainability criteria for biofuels, procedures for monitoring and reporting on the environmental performance of liquid fuels and methodology for determining greenhouse gas emission reductions from the use of biofuels and liquid biofuels”.

2. Treatment of diesel vehicles when using illegal shutdown devices:

a) Are there national regulations or jurisprudence according to which an issued EC type approval (Directive 2007/46/EC) loses its legal effect if an (impermissible) shutdown (defeat) device is discovered, which was already installed, when approval was granted? (A shutdown device - usually a cheat software - manipulates gas measurements.)

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<sup>16</sup> <http://data.europa.eu/eli/dir/2007/46/2019-09-01>

<sup>17</sup> <http://data.europa.eu/eli/reg/2007/715/2012-06-04>

<sup>18</sup> <https://www.riigiteataja.ee/en/eli/504022020002/consolide> (27th of July 2020).

<sup>19</sup> <https://www.riigiteataja.ee/en/eli/519052020004/consolide>.

<sup>20</sup> <https://www.riigiteataja.ee/akt/123082019006>.

<sup>21</sup> <https://www.riigiteataja.ee/akt/129102015001>.

<sup>22</sup> <https://www.riigiteataja.ee/akt/106092019028>.

<sup>23</sup> <https://www.riigiteataja.ee/akt/120052020006>.

Traffic Act § 78<sup>2</sup> establishes the right to revoke the type-approval and single vehicle approval. According to Traffic Act § 78<sup>2</sup> (1) the Road Administration may revoke the type approval if the manufacturer:

- fails to submit such data or technical specifications due to which the type-approval would not have been granted or due to which the type-approval would have been revoked (IV);
- has impermissibly altered the power-driven vehicle's emissions control system of nitrogen compounds (NO<sub>x</sub>) subject to the requirements established on the basis of subsection 78 (5) of Traffic Act (V);
- has used the defeat strategy, defeat device or pollution control failure device that complies with the requirements established on the basis of subsection 78 (5) of Traffic Act or with Regulation (EU) No 168/2013 of the European Parliament and of the Council in the course of granting the type-approval of the power-driven vehicle (VI).

However, Traffic Act is a general regulation. Estonia does not have a specific regulation for treatment of diesel vehicles when using illegal shutdown devices. Nor is there any relevant case law that would specify treatment of diesel vehicles when using illegal shutdown devices.

b) What legal measures have been taken in your Member State (if any) against car manufacturers, which have failed to comply with vehicle type approval rules? These legal measures might include court cases, including between car buyers and manufacturers.

N/A

c) Which requirements will be imposed on the request to retrofit a vehicle in your Member State?

In order to retrofit a vehicle, the owner of the vehicle must submit a digitally signed and freely formatted application (or fill in the proper form at the Road Administration service bureau), a registration certificate of the vehicle and documents indicating the nature of the rebuilding to the Road Administration. It is recommended to draw up a table that includes photos and keep all purchase invoices of materials and works related to the reconstruction.<sup>24</sup>

The Road Administration may request the relevant permit of the vehicle manufacturer and the consent to use the manufacturer's trademark. After the conversion, the Road Administration or an expert recognized by the Road Administration shall check the compliance of the vehicle with the established technical requirements. The retrofit vehicle must comply with the applicable technical requirements but the requirements apply based on the time of first registration of the vehicle. If the converted vehicle complies with the requirements, the technical department of the Road Administration shall formulate the decision to convert the vehicle (Traffic Act § 79 and regulation N<sup>o</sup> 110 "Conditions, requirements and procedure for the type-approval, approval of individual vehicles and conversion of motor vehicles, motorcycles, mopeds and their trailers"<sup>25</sup> § 11).

According to regulation N<sup>o</sup> 110 the following changes are not considered as reconstruction:

- replacement of units, parts, equipment and systems if they belong to the same version of the vehicle type;

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<sup>24</sup> <https://www.mnt.ee/eng/vehicle/reconstruction-vehicle>.

<sup>25</sup> <https://www.riigiteataja.ee/akt/105082014018>.

- the addition of accessories and equipment to the vehicle (like air conditioning, additional brake lights, underrun protection), provided that this does not change the data specified in the vehicle type approval and if their addition is not in conflict with the applicable technical requirements.

Estonia does not have any relevant case law on retrofitting diesel vehicles when using illegal shutdown devices.

d) How does the authority get information about the lack of implementation of any software updates in your Member State?

Estonia has only general regulation for State supervision over compliance with type-approval. Traffic Act § 78<sup>3</sup> subsections 1 to 3 establish that the Road Administration has the authority to verify the compliance of a power-driven vehicle or product with the data approved by the type-approval granted to the vehicle or product by the Road Administration, as well as the manufacturer's ability to ensure the compliance of the vehicle or product with the data approved by the type-approval. The manufacturer, its official representative or importer must prove the compliance of a vehicle or product with the requirements of the type-approval.

The supervisory official has the right to demand that the manufacturer submit relevant documents, data, test protocols and explanations, the right to examine the organisation of the manufacturing of the power-driven vehicle or product, observe the manufacturing process and have randomly chosen products referred for further inspection. If a power-driven vehicle or product does not comply or if the manufacturer is unable to ensure the compliance of the vehicle or product with information approved by type-approval or if the manufacturer fails to ensure access to relevant information, the supervisor has the right to make a precept to the manufacturer to have the deficiency eliminated. Failure to comply with the precept may result in penalty up to 6,400 euros.

There is no further and more specific regulations on supervision over software updates. Likewise, there is no case law on aforementioned matter.

e) Are there less onerous measures under the law of the Member State than imposing a driving ban on a vehicle? Have such less burdensome measures possibly been developed by case law?

N/A

#### **IV. Domestic Law**

Please provide information, including case law, on additional domestic air protection law that could be interesting for other Member States.

The Estonian air protection law is governed by the Atmospheric Air Protection Act. The majority of Estonian ambient air protection case law concentrates on environmental noise, for example resulting from the construction of wind generators (Judgment of the Administrative Law Chamber of the Supreme Court in case no. 3-3-1-88-15, 08.08.2016, summary in English: [http://www.aca-europe.eu/WWJURIFAST\\_WEB/DOCS/BE11/BE11000155.pdf](http://www.aca-europe.eu/WWJURIFAST_WEB/DOCS/BE11/BE11000155.pdf))

It may be interesting to point out that the Estonian National Programme for Reduction of Emissions of Certain Atmospheric Pollutants 2020-2030<sup>26</sup> published on 29 March 2019 lists tolls for heavy-duty vehicles and electric cars as effective measures for emissions reduction, but does not include any proposals for emissions-based taxation or fees for the use of motorways for passenger cars (see for comparison: [https://www.acea.be/uploads/publications/CO2-based\\_motor\\_vehicle\\_taxes\\_European\\_Union\\_2020.pdf](https://www.acea.be/uploads/publications/CO2-based_motor_vehicle_taxes_European_Union_2020.pdf)). Estonia remains one of the three Member States that does not apply CO<sub>2</sub>-based taxation for cars.

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26

[https://ec.europa.eu/environment/air/pdf/reduction\\_napcp/EE%20final%20NAPCP%2029March19%20EN.pdf](https://ec.europa.eu/environment/air/pdf/reduction_napcp/EE%20final%20NAPCP%2029March19%20EN.pdf)