

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 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

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?

In July 2008, the Netherlands applied for a derogation for PM10 and NO2. The European Commission granted this request in April 2009. Directive 2008/50 / EC and the derogation obtained were implemented in the Environmental Management Act on 1 August 2009. There are no rules about prosecution, because it is all administrative and the keyplayers are governmental organisations.

The air quality in the Netherlands is determined by the government with a combination of measurements and model calculations. Air quality measurements are carried out by various governments, engineering firms and private initiatives (such as AiREAS in Eindhoven).

A distinction is made between measurements that meet the legal requirements and alternative measurements. From a legal perspective (in the Netherlands) model calculations by means of the National Air Quality Cooperation Program (NSL National Air Quality Cooperation (Dusseldorp et al, 2015). The results per individual component can also be viewed. Program National Air Quality Cooperation Program) are leading monitoring tools.

The requirements are accessible to everyone via www.luchtmeetnet.nl. This includes measurements from the National Institute for Public Health and the Environment (RIVM National Institute for Public Health and the Environment National Institute for Public Health and the Environment), GGD Municipal Health Service, Municipal Health Service Amsterdam, Central Environmental Management Service Rijnmond (DCMR Environmental Service Rijnmond Environmental Service Rijnmond), Province of Limburg, Arnhem Regional Service (ODRA Environmental Service Region Arnhem Environmental Service Region Arnhem) and Environmental Service Central and West Brabant (OMWB Environmental Service Central and West Brabant Environmental Service Central and West Brabant)

Various substances are measured at approximately 80 monitoring stations throughout the Netherlands. These monitoring stations are located in the city, near roads and in the countryside. A large number of substances are measured continuously and automatically. This concerns ozone (O3), nitrogen oxides (NOx), sulfur dioxide (SO2), fine dust (PM2.5 fine dust fine dust / PM10 fine dust fine dust), carbon monoxide (CO), ammonia (NH3 ammonia ammonia), hydrogen sulfide (H2S) and carbon black. The data is directly available via www.luchtmeetnet.nl and teletext page 711. The 'air quality' is communicated via these media according to an index based on health effects.

2. Are those directives properly implemented in your Member State?

Some are stricter others not; it depends on the situation (city or village, etc.)

*Yes; In the Netherlands, European environmental directives related to air pollution are implemented in the Environmental Management Act (*Wet Milieubeheer* in Dutch) and the Activities Decree (*Activiteitenbesluit*).*

The Industrial Emissions Directive which regulates emissions from large industrial sources is implemented in the Activities Decree. This Directive sets rules for large combustion plants, waste incineration plants, VOC solvents and IPPC installations.

Emissions that are not regulated by the general binding rules of the Activities Decree are subject to permits. The emission limits for most substances emitted to air by industrial sources are given by the Netherlands Emission Guideline for Air.

Requirements for mid-sized combustion plants are laid down in the Activities Decree. The Decree sets emission limit values (ELV) for NO_x, SO_x, PM and C_xH_y (based on best available techniques) and gives provisions on maintenance.

The Activities Decree applies to installations with a nominal capacity over 400 kW; with regard to biomass installations, the Activities Decree applies irrespective the nominal capacity. For gas turbines and stationary engines, there is no minimum input rate. The ELVs depend on the type of plant (boiler, engine or gas turbine) and the type of fuel used (solid, liquid or gaseous). New plants must meet the ELVs now. Existing plants must meet the limit values from 2017.

In the Netherlands, an increase in the use of biomass is expected. For that reason, ELVs are given for the use of biomass in wood-fired boilers and bio-oil fired engines, for example.

The ELVs for NO_x for natural gas-fired stationary engines are important parts of the Activities Decree. In the Activities Decree, ELV is further tightened to 100 mg/Nm³. This ELV plays an important role in reducing industrial NO_x emissions. About 10% of the electricity in the Netherlands is generated by gas engines in a CHP application (Combined Heat and Power). To meet the ELV, a SCR (Selective Catalytic Reduction) is needed. In the Netherlands, SCR is considered as BAT. This technique is often applied in In the greenhouse horticulture.

*The monitoring requirements are performed by separate measurements. For boilers, a single set of measurements is required once the ELVs have come into force. Measurements for engines and gas turbines are also required after the ELVs have come into force, and measurements should be repeated every four years. Measurements should be performed by an accredited laboratory. For certain NO_x abatement techniques, however, continuous measurements are required. Continuous measurements should meet the requirements of the quality assurance standard EN-14181. The background information is provided in the *Manual Measurement of Air emissions*.*

The national policy with respect to reduction of emissions of volatile organic compounds is mainly aimed at measures at the source of the processes. This means that working with other products and processes is preferred over end-of-pipe abatement techniques. Besides this

typical Dutch approach, the European directives concerning VOC are strictly implemented in the general binding rules of the Activities Decree.

The Gothenburg protocol was revised in May 2012. VOC emissions in the Netherlands must be reduced by 8% in 2020 compared to 2005. This target is expected to be achieved through the current policy and legislation. Emissions from refineries and tank and ship loading and unloading are a key issue.

The requirements on monitoring to be incorporated in permits can be found in the Netherlands Emission Guidelines for Air (NeR). The NeR is implemented in the Activity Degree since 1 January 2016.

The Manual Measurement of Air Emission describes the general and quality assurance aspects of measuring air emissions from stationary sources and can be used as a background document. The manual also provides concrete tools for the competent authorities in the form of factsheets to be used during inspections. The factsheets describe, per measurement standard (type of measurement), the specific quality-determining factors for the type of measurement in question.

Emissions that are not regulated by the general binding rules of the Activities Decree are subject to permits. The emission limits for most substances emitted to air by industrial sources are set by the Netherlands Emission Guidelines for Air (NeR).

The NeR is a national guideline, aimed at harmonising the environmental permits in the Netherlands with respect to reducing of emissions to the air. The system of the NeR was derived from the German TA Luft in the 1990s. The NeR is implemented in the Activity Degree since 1 January 2016. The Activity Degree has legally binding status.

The NeR does not have a legally binding status. In practice, however, it functions as an important guideline for the competent authorities during the permitting process. The content of the NeR is monitored by representatives of the competent authorities (provinces, municipalities and the national government) and the representative bodies for trade and industry.

General concentration standards are given for each substance or class of substances. In most cases, a threshold value is given above which implementation of measures should be considered. This threshold value is called the mass flow limit. The concentrations are upper limits for the concentration in the waste gas flow of a specific relevant source.

As well as the general concentration standards, the NeR also contains special provisions for specific activities and branches of industry. In the NeR, these are called special regulations.

The emission limits for each substance or class of substances can be found in the database. By entering the (first part of) the name or CAS number of the substance in the database, the classification of the substance and its mass flow limit and emission standard are shown.

The Dutch policy to achieve good air quality has two objectives:

- limiting the emission of harmful substances and*
- preventing long-term exposure of people to pollution*

The granting of environmental permits to companies that require a permit as well as the implementation of a source control policy play a major role in limiting emissions.

To prevent the exposure of people, the zoning plan in connection with the assessment of the environmental quality standards is an important instrument (also in the context of proper spatial planning).

The most important regulations on air quality can be found in Chapter 5 (Title 5.2) of the Environmental Management Act (Wet milieubeheer (Wm) in Dutch). Specific elements of the law are set out in Decrees and Ministerial Regulations.

The essence of Title 5.2 of the Wm consists of air quality standards, based on European directives. It also describes the basic obligations imposed by European directives, namely: assessment of air quality, reporting and actions to take. In the Netherlands, most of the measures are set out in the National Air Quality Cooperation Programme (NSL in Dutch).

The following building blocks provide a brief description of the air quality regulations:

- *1. Air quality regulations and limit values*
- *2. National Air Quality Cooperation Programme (NSL)*
- *3. Not make a significant contribution (NIBM)*
- *4. Assessing the air quality*

1. Air quality regulations and limit values : Particulate matter (PM₁₀) and nitrogen dioxide (NO₂) are the main substances in the air quality regulations. The air quality regulations and limit values are recorded in the Environmental Management Act (Wm), Title 5.2: air quality requirements. Article 5.16 (1) of the Wm indicates when an (air polluting) project is permissible. The competent administrative authority must then make a reasonable case that the project meets one or a combination of the following conditions:

- *no limit value (in Dutch) is actually or threatened to be exceeded*
- *on balance (in Dutch), a project shall not lead to a deterioration of the air quality*
- *a project shall not make a significant contribution (NIBM) to air pollution*
- *a project has been included in, or fits in, the National Air Quality Cooperation Programme (NSL) or a regional programme of measures.*

Spatial projects are of course also subject to the principle of proper spatial planning. For the air quality this may mean: the most vulnerable group on the least polluted location.

Along motorways and provincial roads, the Decree on sensitive destinations (in Dutch: Besluit gevoelige bestemmingen) may be relevant. This is because special rules apply within 300 and 50 metres of these respective roads. These rules aim to protect sensitive groups against air pollution exceeding the limit values. The administrative authority does not need to assess all projects and decisions against the air quality regulations from the Environmental Management Act. This is only required for the responsibilities listed in Article 5:16 (2) of the Wm.

2. National Air Quality Cooperation Programme (NSL)

The National Air Quality Cooperation Programme (NSL) provides national, regional and local measures to meet the standards. It takes account of the desired and planned spatial developments. The government, provinces and municipalities work together within the NSL.

To keep the NSL up to date, an annual update is performed: the NSL monitoring. The update includes:

- *a review of the past year (including the measurement and calculation results)*
- *an update of the forecasts for coming years*

3. Not make a significant contribution (NIBM)

If a project does 'not make a significant contribution' (NIBM) to air pollution, then no assessment against the air quality limit values is required. Proper spatial planning is always a requirement.

The NIBM implementation rules are set out in the Order in Council 'Not Make a Significant Contribution' (NIBM Decree) and the Ministerial Regulation 'Not Make a Significant Contribution' (NIBM Regulation).

The NIBM Regulation establishes quantitative limits for specific projects. A new development with no more than 500 houses and 1 access road, for instance, is always defined as not making a significant contribution.

However, there are also other ways that governments and promoters can prove a project does not make a significant contribution to air pollution.

4. Assessing the air quality

Where and how should concentrations of air pollutants be calculated and measured? This is defined in the [Air Quality Assessment Regulation 2007 \(Rbl\)](#).

The Regulation describes standard calculation methods for the assessment of air quality along roads and at point sources (companies).

Assessment against the limit values is not necessary everywhere. The two criteria are:

- *Is the location accessible to people? (applicability principle)*
- *How long for will how many people be exposed at that location? (exposure criterion)*

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

No *infringement* proceedings pending against the Netherlands 2008/50 or 2004/107

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.)?

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

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

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)?

Please provide a concise overview of cases of particular interest.

There are so many cases in administrative law at the Raad van State because we have so many regulations. The people are complaining about everything.

those rules are subject to case law, administrative or civil. There is too many cases to provide a few. But it is mainly about: Where and how do you calculate and measure concentrations of air pollutants? This is stated in the implementing rules of the Air Quality Assessment Regulation 2007 (Rbl).

The regulation describes standard calculation methods for the assessment of air quality along roads and at point sources (companies).

Testing against the limit values is not necessary in all places. The two criteria are:

- Can people come to that place? (principle of applicability)
- How long are people exposed in that place? (exposure criterion)

Applicability principle and exposure

Assessment points for industrial sources and roads

In order to be able to test a project against the limit values that apply to air quality, it is first necessary to determine where to test. Two principles are relevant here: the applicability principle and the exposure criterion. There are differences in the assessment points for companies (establishments) and roads.

Establishments

Article 74 of the Air Quality Assessment Regulation (Rbl) applies to calculating the air quality at establishments. This article provides that concentrations are determined from the limit of the establishment concerned. According to this article, testing must therefore take place outside the institution. In addition, there are two principles that must be taken into account, the applicability principle and exposure:

1. According to the principle of applicability, air quality does not need to be determined at a number of locations. Accessibility plays a major role in this. This is regulated in Article 5.19 paragraph 2 of the Environmental Management Act. This is discussed in more detail on the page on the applicability principle.

2. The exposure of persons is also important. This follows from Article 65 and Article 22 of the Rbl. How to deal with this is explained in more detail on the page on the exposure criterion.

The principle is therefore: testing must be carried out everywhere outside the design boundary, except in places that are excluded on the basis of applicability and exposure. That it is important to start from this principle and to motivate why places are exempted from

assessment is evident from judgment 200805209/1 / M2. In this, the Council of State judges that the mere absence of a home is not sufficient to exclude a place from assessment. There must therefore be solid substantiation as to why testing is done in certain places, such as houses, and not in other places. The explanation on the pages about the applicability principle and the exposure criterion can help. In addition, a number of examples have been worked out.

Representative

Measurement and calculation points must be representative of the environment. Measuring or calculating in a micro environment must be prevented. These results are not representative of the environment. That is why Article 22 of the Rbl states that a point must be representative of an area of at least 250 by 250 meters. This criterion comes from the European Air Quality Directive and only indicates that a measurement or calculation point must be representative of the exposure of the population in a somewhat larger area.

The aim of the directive is that air quality must be judged sensibly in places where the population is exposed. In addition to the sensible placement of a calculation point, a representative image of the air quality is also created by taking multiple calculation points.

For example:

A company with a significant emission of particulate matter is located 200 meters from the built-up area. A recreational walking path is located a few tens of meters in the rural area. The permit for this company and the establishment of the zoning plan must determine whether the air quality at this location should be assessed. In addition, the more distant built-up areas must also be taken into account. The built-up area contains other functions than the rural area, which may entail a different residence time. For example, homes, companies, nurseries and schools. This can have an effect on the duration of exposure. The close environment of the company is therefore not representative of the entire environment. Therefore, one or more calculation points will also have to be placed on the edge of the built-up area, even if it appears that there are no air quality bottlenecks near the company.

Weigh

The applicability principle and the exposure criterion are also important for the assessment of air quality in roads. In addition, measuring and calculation points in micro-environments must also be prevented here. The Rbl provides additional requirements for this in Articles 22 and 70. A distinction is made between the different substances:

- for NO₂, particulate matter (particulate matter), lead and benzene, a measuring or calculation point applies:

1. Representative measurements

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?

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

4. All those rules are subject to case law, administrative or civil. There is too many cases to provide a few.

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

1. Is this directive properly implemented in your Member State? Yes. The directive is “implemented” in the Wet Milieubeheer and will be opgenomen worden in the future Omgevingswet.

Have stricter emission reduction commitments been introduced? No

Has national legislation been adapted to meet the emission reduction commitments? No

2. Have EU infringement proceedings in relation to this directive been brought against your Member State? No, not to The Netherlands

3. Is there national case law in which this directive is relied upon? No, (not yet or not published?)

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 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

1. How has your Member State implemented these EU vehicle type approval rules? Implemented in Traffic Act (in Dutch Wegenverkeerswet,) Environmental Management Act (Wet Milieubeheer) en Act of Economic Offences Wet Economische delicten

Bepaling in verordening (EG) 715/2007	Bepaling in uitvoeringsregelgeving
Art 1 - 9, 10.1, 10.2, 10.4, 11.2, 12, 14, 15 en 18	Not necessary

Bepaling in verordening (EG) 715/2007	Bepaling in uitvoeringsregelgeving
Art 10.3, 10.5	– Artikelen 21, eerste lid, van de Wegenverkeerswet 1994 in samenhang met artikelen 3.1, 3.2, 3.6 en 4.1 van de Regeling voertuigen – Artikel 48 in samenhang met de artikel 42 van de Wegenverkeerswet 1994
Art 11.1, 11.3	Artikel 21, eerste lid, van de Wegenverkeerswet 1994 in samenhang met de artikelen 3.1, 3.9 en 4.2 van de Regeling voertuigen
Artikel 13.1, 4.1, 4.2, 4.3, 5.1, 5.2, 6.1, 6.4, 6.5, 6.6, 6.7, 7.2	Artikel 2 van het Besluit typekeuring motorrijtuigen luchtverontreiniging in samenhang met de artikelen 9.5.1 en 9.5.6 van de Wet milieubeheer, in samenhang met artikel 1a, onder 2°, 2 en 6, van de Wet op de economische delicten
Artikel 13.1, 10.5,	Hoofdstuk 5 van de Algemene wet bestuursrecht en hoofdstuk IX en X van de Wegenverkeerswet 1994
Artikel 13, eerste lid, in samenhang met artikel 11, eerste en derde lid	Hoofdstuk 5 van de Algemene wet bestuursrecht en hoofdstuk IX en X van de Wegenverkeerswet 1994
Artikel 13, tweede lid	Artikel 25, tweede lid, van de Wegenverkeerswet 1994
Artikel 16	Besluit van 3 december 2008, houdende wijziging van het Voertuigreglement ter implementatie van VN/ECE-reglementen nrs. 108 en 109 met uniforme voorschriften betreffende de goedkeuring van de productie van vernieuwde banden voor personenauto's, bedrijfsauto's en aanhangwagens en in verband met verordening (EG) nr. 715/2007 (Stb. 2008, 559)
Artikel 17	De artikelen I, II, III en IV van dit besluit en de wijzigingsregeling



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.). *No (not yet?)*

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.

None, so far.

c) Which requirements will be imposed on the request to retrofit a vehicle in your Member State? *There is no regulation (yet ?)*

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

Please provide a concise overview of cases of particular interest.

e) Are there less onerous measures under the law of the Member State than imposing a driving ban on a vehicle? No.

Have such less burdensome measures possibly been developed by case law?

No, not yet?

There are some developments such as a rise in taxes, or regulation about equal environmental zones; Installing and removing particulate filters; Re-Examine existing vehicles;

IV. Domestic Law

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

See above , part I