

SLOVAK REPUBLIC

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 Europe¹ 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 air²

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 the EU official sources (e.g. Country Report Slovakia 2019) there are two main problems in the domain of ambient air quality in the Slovak Republic. The first problem is an appropriate measuring of air pollution. Nevertheless, the competent Slovak authorities have improved yet still their systems of monitoring to fulfil EU standards. The second problem is a quality of ambient air at the Slovak capital – Bratislava. The Bratislava ambient air is made worse by specific problems such as transportation without sufficient electrical engine alternatives as well local imperfect combustions producing dust, smoke and substances.

Firstly, there is no special crime of air ambient quality in Slovak Criminal Code. The protected object is a water and ambient air together (in other words as a whole) as well as the ozone layer. According Art. 303 (1) of the Slovak Criminal Code (Breach of water and Air Protection regulations) any person who breaches generally binding legal regulations on water and air protection, and causes deterioration of surface or ground waters quality or air quality to the extent that he causes substantial damage shall be liable to a term of imprisonment of one to five years.

Therefore, the main judicial protection of ambient air quality produces the administrative justice. There are a few administrative adjudications concerning the non-compliance with EU requirements. An object of these cases concerns the review of penalties imposed by the inspectors due to non-compliance of local combustion standards. Par example, Slovak administration environmental authorities imposed the total amount 56 000 € of fines for non-compliance with the provisions set forth under generally binding legal policies in 2010. However, the Regional Court in Bratislava declared an annulation of “the Bratislava integrated plan for improvement of ambient air quality in 2018 year”. The court argued that the acceptance of the above-mentioned unrealistic plan has been infringed the public interest to protect an environment. The EU and domestic legal text is clear – any plan for improvement of ambient air quality shall declare measurable, revisable and time-limited actions. These arrangements are absent in the Bratislava plan, the court stressed.

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

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

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

The Act 137/2010 Coll. on Air Protection implements those directives. This act is a comprehensive legal framework for control and regulation of air pollutants. It covers wide range of environmental regulation for fuel quality, fuel registration, condition of BATNEEC for fuel combustion in the middle and large scale stationary sources reporting obligations, mechanisms of controlling including charges and support. It contains the plan of two stages of decreasing of pollution. The first one will start from 2020 until 2029 and the second will be binding from 2030.

There are nine implementing decrees issued by the Ministry of Environment of the Slovak Republic, which is competent state body for the protection of the ambient air. For example, ministerial Decree No. 410/2012 Coll., as amended, sets emission limit values (common and specific) for wide scale of processes and technologies (combustion plants, waste incineration, organic solvents, etc.) and further technical requirements and operating conditions. Ministerial Decree No. 244/2016 Coll. on air quality sets for example limit values for certain air pollutants (sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter PM_{2,5} and PM₁₀, carbon monoxide, lead, ozone, benzene, PAH, cadmium, arsenic, nickel, and mercury).

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

In the first case, the Commission asked the Slovak Republic to act on air pollution at 2014 year because Slovakia was failing to protect citizens from fine dust (PM₁₀) pollution. These tiny particles originate in emissions from industry, traffic and domestic heating. The Slovak Republic report demonstrated that some zones in the country continued to be in exceedance of a daily limit value for PM₁₀. Par example, six zones are in exceedance of the daily limit value for PM₁₀: capital city Bratislava, Banskobystrický region, city Košice, Žilina region and Košice region. The Commission send letters of formal notice to Slovakia on 22 February 2013. If the Member States in question fail to act, the Commission may take the matter to the EU Court of Justice. However, the Slovakia changed successfully the meaning of Commission and did not face the Court proceedings.

In the next affair, the Commission called on the Slovak Republic to comply with the EU legislation on ambient air quality. The Commission sent a letter of formal notice to Slovakia over air pollution by NO₂ because EU rules on ambient air quality (Directive 2008/50/EC) and cleaner air for Europe requires Member States to assess air quality throughout their territory and to take measures to limit the exposure of citizens to pollutants. Since its entry into force, Slovakia failed to ensure an appropriate number and type of sampling points and to provide sufficient valid data. The Slovak Republic accepted the notice of Commission and changed its legislation.

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.

No. Slovak environmental authorities have accepted all judgements till now.

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

Traditional claimants are citizens of municipality involved in litigation as well as NGO's. Par example, the claimants in the above-mentioned case (Bratislava plan) were 10 citizens of Bratislava and non-governmental organisations CEPTA, ClientEarth a Cyklokoalícia.

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)?

It is true that there are no cases concerning an annulment of ban of diesel engine cars in Slovakia. Some cities will prepare these bans in 2020 for their low emission zones.

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?

The Slovak Act on Air Protection distinguishes several groups of penalties. It depends on the relevant authority (e.g. municipality, regional authority or Slovak inspection) and the classification of violation of public law. Fines imposed by the district office or inspection may differ from 330 EUR to 330 000 EUR, depending on the severity of administrative offense. The Slovak Criminal Code also stipulates some sorts of sanctions, especially imprisonment. The relevant authority has a respect to a relevance and scope of infringement, facts causing the infringement as well as a length of illegal situation.

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 pollutants³

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 Slovak Republic has achieved significant progress over the almost last two decades in the field of the anthropogenic air emissions reducing. In spite of this

³ <http://data.europa.eu/eli/dir/2016/2284/oj>

progress, the air quality in some Slovak areas is poor. It means that limit values mainly for particulate matter are exceeded. One of the tools is the further reduction of Slovak air emissions. To achieve this reduction Slovakia is obliged to draw up, adopt and implement air pollution control programme (NAPCP) including national emission ceilings for the Slovak Republic. This National Program was prepared and delivered to the European Commission at the beginning 2019.

It is also important to stress the Slovakia has to apply the new Air Quality Strategy which aim is to prepare a comprehensive concept of air quality management for the Slovak Republic and achieve good air quality throughout the territory of the Slovak Republic. However, there is no information whether stricter emission reduction commitments will introduce in Slovakia.

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

No. EU infringement proceedings in relation to the Directive (EU) 2016/2284 has not been brought against Slovakia.

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

The Slovak Supreme Court decided a dispute concerning a building permission including an ambient air protection in 2020. The new installation for manufacturing a cellulose should replace old one at above mentioned Žilina region. The main problem was an extension of cellulose production and its negative impact on ambient air. The defendant, regional authority, supported by the producer argued the non-relevance of local urban plans, which contain strict requirements for environmental protection. The authority in particular declared the limitation of NO_x, SO_x emission or PM_{2,5} is not a today's goal but it is a mission for future. The Supreme Court did not agree and referring to the preamble of the Directive (EU) 2016/2284 court stressed an obligation to commence to decrease those emissions immediately.

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 vehicles⁴ 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 information⁵

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

In accordance with Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) (5), vehicles manufacturers seeking approval for their systems, components, or separate technical units have the choice of meeting the requirements of either the relevant Directives or the corresponding UNECE Regulations. The Slovak Republic implemented these vehicle rules through Decree of the government of the Slovak Republic No. 140/2009 Coll., laying down details about type approval of motor vehicles and their trailers, systems, components, and independent technical units designed for such vehicles.

⁴ <http://data.europa.eu/eli/dir/2007/46/2019-09-01>

⁵ <http://data.europa.eu/eli/reg/2007/715/2012-06-04>

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.)

There are no judicial experiences in Slovakia. However, competent authorities are legitimate to perform some remedies if they discover serious technical changes have lease give examples. The Slovak decree in terms "some remedies" is not exact what does it means.

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.

Although a long time have passed since the Dieseldate scandal came to light, massive number of vehicles owners in Slovakia are still waiting for compensation. The main problem is a lack of financial support for judicial representation in abroad. However, the main reason for this failure is the lack of an effective collective redress tool in Slovakia. Therefore, Slovak NGO consumer protection has started to examine cooperation with professional legal service providers due to the absence of a collective redress tool in Slovakia. A public campaign was kicked off by this NGO to reach out to consumers, but the idea of launching a court case ultimately had to be dropped due to a lack of resources. There is no sufficient interest of car owners to bring a collective redress. This problem has persisted. It is not also possible to incorporate into pending abroad cases, e.g. Germany.

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

As it has already been noted, there are no sufficient remedies for car owners in case of dieseldate scandal. The car sellers recalled to repair product defects in order to avoid the risk of legal action.

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

The information campaign has been very neutral in Slovakia. We do not know accurate reasons. The Slovak government did not perform any serious legislative or administrative activities for dissatisfied car owners.

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?

There is a system of a certificate of conformity in the Slovak Republic. The above-mentioned certificate of conformity (CoC) is issued by a private but authorized party (an independent technical laboratory) and states that the certified product meets the required standards or specification. The Slovak Vehicle Testing Stations verify a constancy of driving

standards. If they discover any dysfunctions, the possibility to repair them is given. If they find out serious defects, the vehicle is inactivated. There are no possibility to solve that situation in Slovakia.

IV. Domestic Law

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

All relevant information was given above.