

Recent CJEU Jurisprudence on Air Quality

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Outline

- EU Legislation on Ambient Air Quality
- Top-Down Enforcement – EU Commission Infringement Proceedings
- Bottom-Up Enforcement – Preliminary References out of Actions in Member State Courts
 - Janecek (C-237/07, EU:C:2008:447)
 - ClientEarth (C-404/13, EU:C:2014:2382)
 - Deutsche Umwelthilfe (C-752/18, EU:C:2019:1114) - Enforcement

Setting the Focus

Air Quality is subject to a variety of EU rules

- End of Pipe Standards, i.e. Industrial Emissions Directive 2010/75 EU
- Fuel Quality Standards, i.e. Directive (EU) 2016/802 relating to a reduction in the sulphur content of certain liquid fuels
- Emission budgets, i.e. Directive (EU) 2016/2284 on National Emission Ceilings
- **Ambient Quality, i.e. Directive 2008/50/EC**

Ambient Air Quality Rules

- Various limit and target values on specific pollutants in the ambient air
 - Art. 13(1)
 - MSs shall ensure that, throughout their zones and agglomerations, levels of **sulphur dioxide, PM10 (2005), lead, and carbon monoxide** [+ some instances of **PM2.5**] in ambient air do not exceed the limit values laid down in Annex XI
 - In respect of **nitrogen dioxide (NO₂ – 2010 + 5 year extension possible) and benzene**, the limit values specified in Annex XI may not be exceeded from the dates specified therein
 - Art. 23(1)
 - Where ... the levels of pollutants in ambient air exceed any limit value ... Member States shall ensure that **air quality plans** are established for those zones and agglomerations in order to achieve the related limit value or target value ...
 - 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**.
...

Ambient Air Quality Rules

Practical Application

- PM10 (particles, dust) are an issue in cities where wood or lignite (brown coal) are used for heating, in particular in Bulgaria or Poland
- NO₂ is an issue in cities with much automobile traffic with diesel engines, many EU 15 Member States are affected, eg. Germany, France or UK
- Compliance is often very challenging

Infringement Proceedings

Art. 258 TFEU >> Commission can apply to the CJEU for a finding that a Member State has not complied with obligations under EU law

Art. 260 TFEU >> Commission can introduce a second action asking that the Court imposes a lump sum and/or a recurring penalty payment on the MS until the infringement is resolved

- if the CJEU had found under Art. 258 that there was an infringement and
- if the Member State does not put an end to it

Eg.

- Commission/Italy (C-196/13, EU:C:2014:2407) on illegal landfills: 40 Mio Euro lump sum + 42.800.000 Euro every 6 months, to be reduced for each cleaned up landfill > last year 40 landfills still not cleaned up > 8 Mio. Euro
- Commission/Greece (C-378/13, EU:C:2014:2405) on illegal landfills: 10 Mio Euro lump sum + 14.520.000 Euro every 6 months, to be reduced for each cleaned up landfill

Infringement Proceedings

First Approach

- COM v Sweden (C-479/10, EU:C:2011:287)
- COM v Portugal (C-34/11, EU:C:2012:712)
- COM v Italy (C-68/11, EU:C:2012:815)

In Year X the air had been bad at some locations!

Art. 260 TFEU?

Infringement Proceedings

New Approach – COM v Bulgaria (C-488/15, EU:C:2017:267)

- Art. 13 - exceeding the limit values **systematically and continuously**
- Art. 23 – plans insufficient
 - balance between minimising the risk of pollution and the various opposing public and private interests
 - limit values continued to be exceeded

Confirmed: COM v Poland (C-336/16, EU:C:2018:94)

>> Continued infringement could lead to the imposition of payments under Art. 260 TFEU

Infringement Proceedings

Current round

- COM v France (NO₂)(C-636/18, EU:C:2019:900)
 - Limit values
 - structural problems irrelevant
 - highest values determine exceedance
 - restrictions of traffic can be justified
 - absence of sufficiently strict standards for cars do not justify the exceedance
 - Plans
 - no specific considerations for the areas concerned => manifestly insufficient
- COM v Romania (PM₁₀)(C-638/18, EU:C:2020:334)

Infringement Proceedings

Current round

Pending

- *COM v Germany (NO2) (C-635/18)*
- *COM v Hungary (PM10) (C-637/18)*
- *COM v Italy (PM10) (C-644/18) (Grand Chamber requested)*
- *COM v UK (NO2) (C-664/18)*
- *COM v Italy II (NO2) (C-573/19)*
- *COM v Bulgaria II (SO2) (C-730/19)*
- *COM v Spain (NO2) (C-125/20)*

Janecek - EU:C:2008:447



Munich, Landshuter Allee

Janecek - EU:C:2008:447

- Breach of EU limit values for ambient air quality was not disputed (Dir 96/62 & Dir 99/30)
- Mr. Janecek sued the city, asking for the plan required by the Directives
- German Supreme Administrative Court asked CJEU whether a citizen has a **right to** such **a plan**
- German doctrine: general public interest (plans) is defended by public authorities, not individuals
- Direct Effect? Sufficiently clear and unconditional
- CJEU: individuals have a legitimate interest in a healthy environment (see COM v Germany!)

ClientEarth - EU:C:2014:2382



ClientEarth - EU:C:2014:2382

- In 40 of 43 zones and agglomerations in the UK, one or more of the limit values for NO₂ were exceeded in 2010 (road traffic and domestic heating)
- ENGO ClientEarth applied in UK courts for an injunction against the UK to comply with the limit values as soon as possible and by 2015 at the latest
- High Court and Court of Appeal refuse: political question, Supreme Court referred to the CJEU
- CJEU: Content of plans: discretion, but exceedance must be as short as possible
- CJEU: Courts must take '**any necessary measure**, such as an order in the appropriate terms, so that the authority establishes the plan'

ClientEarth - EU:C:2014:2382

Follow-up: UK High Court is looking deeply into the technicalities to achieve ambient air quality (congestion charge appears the preferred measure)

- High Court (Garnham J), R (ClientEarth (No.2)) v Secretary of State for the Environment, Food and Rural Affairs and others [2016] EWHC 2740 (Admin)
- High Court (Garnham J), R (ClientEarth (No.3)) v Secretary of State for the Environment, Food and Rural Affairs and others [2018] EWHC 315 (Admin)

Deutsche Umwelthilfe

C-752/18 (EU:C:2019:1114)

Enforcement

- German region of Bavaria refuses to ban diesels in cities, alternative measures do not promise a solution in the near future
- Supreme Administrative Court of the region imposed two penalty payments of 4.000 Euros each; paid from the environmental authorities to regional ministry of finance
- This court asked the CJEU what to do, in particular whether officials, including the regional prime minister(!), need to be placed in coercive detention until they adopt the necessary measures

Deutsche Umwelthilfe

C-752/18 (EU:C:2019:1114)

Enforcement

- MS enjoy procedural autonomy, subject to principles of equivalence and effectiveness
- If a judgment cannot be enforced the **essential content** of the right to an effective remedy is violated, in particular, if it is about health
- Interpretation in conformity (depends on internal law)
- Disapply any provision that is contrary to EU law

Deutsche Umwelthilfe

C-752/18 (EU:C:2019:1114)

Enforcement

BUT: Right to Liberty (Art. 6 of the EU Charter of Fundamental Rights) must not be infringed either

- Is there a sufficient legal basis for coercive detention in MS law? >> For MS Courts to decide!
- Proportionality of Detention? Is there a less restrictive measure?

Deutsche Umwelthilfe

C-752/18 (EU:C:2019:1114)

Follow-up

- Bavarian situation still open because a new plan without diesel bans was issued > compliance between 2020 and 2026
- In the neighbouring German region of Baden-Württemberg the courts ordered a one-time penalty of 25.000 Euro to be paid from the region to a medical NGO (13 K 5412/15) – apparently the regional government now intends to comply
- French Council of State ordered the state pay 10 Mio. Euros per semester until clean air is achieved (ECLI:FR:CEASS:2020:428409.20200710) – French law clearly allows this method of enforcement, though this is the highest sum ever (recipient unclear, possibly yet to be decided: plaintiff, other NGOs or independent state body)
- Italy: a special commissioner can be appointed to adopt the necessary measures

Thank you for your attention!

