Task Force on Access to Justice, 12th meeting
Thematic focus: Access to justice in cases relating to air quality

Legal Actions for „Clean Air“ in Germany – NO²

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Compliance issues related to EU clean air legislation in Germany

Compliance with EU air quality standards in Germany
(according to Directive 2008/50/EC on ambient air quality and cleaner air for Europe)

<table>
<thead>
<tr>
<th>Pollutant</th>
<th>Concentration</th>
<th>Averaging period</th>
<th>Legal nature</th>
<th>Permitted exceedences each year</th>
<th>Compliance in 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fine particles (PM2.5)</td>
<td>25 µg/m³</td>
<td>1 year</td>
<td>Target value to be met as of 1.1.2010 Limit value to be met as of 1.1.2015</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td></td>
<td>350 µg/m³</td>
<td>1 hour</td>
<td>Limit value to be met as of 1.1.2005</td>
<td>24</td>
<td></td>
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<tr>
<td></td>
<td>125 µg/m³</td>
<td>24 hours</td>
<td>Limit value to be met as of 1.1.2005</td>
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</tr>
<tr>
<td>Sulphur dioxide (SO2)</td>
<td>200 µg/m³</td>
<td>1 hour</td>
<td>Limit value to be met as of 1.1.2010</td>
<td>18</td>
<td></td>
</tr>
<tr>
<td></td>
<td>40 µg/m³</td>
<td>1 year</td>
<td>Limit value to be met as of 1.1.2010</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td>Nitrogen dioxide (NO2)</td>
<td>50 µg/m³</td>
<td>24 hours</td>
<td>Limit value to be met as of 1.1.2005</td>
<td>35</td>
<td></td>
</tr>
<tr>
<td></td>
<td>40 µg/m³</td>
<td>1 year</td>
<td>Limit value to be met as of 1.1.2005</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td>PM10</td>
<td>50 µg/m³</td>
<td>24 hours</td>
<td>Limit value to be met as of 1.1.2005</td>
<td>35</td>
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</tr>
<tr>
<td></td>
<td>40 µg/m³</td>
<td>1 year</td>
<td>Limit value to be met as of 1.1.2005</td>
<td>n/a</td>
<td></td>
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<tr>
<td>others</td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
</tbody>
</table>
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Nitrogen dioxide loads in Germany

Nitrogen dioxide loads in Germany down slightly in 2018
NO₂ thresholds still exceeded in many cities, only one case of particulate exceedance, high level of ozone pollution

Legal actions for the implementation of the NO² - limits

- Env. NGOs brought legal actions in many German cities against insufficient air quality plans

- Operative part of the judgement:

  Orders the defendant to amend the air quality plan in such a way that it contains the measures necessary to comply with the [...] limit value for NO² [directive 2008/50/EC] in the defendant's urban area.

- More detailed specification on the measures to be taken (or – at least – taken into consideration) by the defendant in the grounds of the judgement

- Federal Administrative Court on 27 February 2018 (Case No. 7 C 30.17):

  • Traffic restrictions for diesel-powered vehicles lawful and ...
  • ... have to be included in an air quality plan if the only appropriate measure to reach compliance with the NO²-limit as soon as possible

Source: Deutsche Umwelthilfe e. V., see https://www.duh.de/fileadmin/user_upload/download/Projektinformation/Verkehr/Feinstaub/2018-10-22_Right-to-Clean-Air_Hintergrundpapier_D.pdf
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Enforcement issues

• **Scenario: Insufficient update of an air quality plan**

  Can the plaintiff seek enforcement on the basis of the initial judgement or does he have to bring a another legal action against the updated air quality plan?

  – Scope of the enforceability of the judgement

  – Power of the enforcement court to interpret and further develop the judgement

• **Scenario: Refusal to implement judgements despite enforcement orders**

  – Reluctance of governments and regional authorities to take severe measures

  – Imposition of penalty payments on public authority ineffective

  – Legal possibility of the enforcement court to impose coercive detention on public officials in the event of non-compliance?

  ➢ Preliminary ruling procedure before the ECJ initiated by the Bavarian Administrative Court on 9 November 2018 (Case no. 22 C 18.1718)
Outcomes

- Compliance with EU air quality standards is on the political agenda
- Authorities forced to take more ambitious action
- Some German cities imposed traffic bans on diesel-powered vehicles (as ultima ratio)

Traffic bans on diesel-powered vehicles in German cities (as ordered by court decisions or already in force):

Source: ARD-Tagesschau, see https://www.tagesschau.de/multimedia/bilder/grafik-dieselfahrverbote-101^-v-videoweb1.jpg

Source: German Environment Agency, see: http://gis.uba.de/website/umweltzonen/lrp.php
Thank you for your Attention.

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https://www.umweltbundesamt.de/en/topics/sustainability-strategies-international/environmental-law