

Questionnaire on Air Pollution Law

National Report Germany

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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 Europe⁴ 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 air⁵ (Barrón)

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 practise, there were several problems in Germany with regard to the fulfilment of the obligations set out in the directives.

The implementation of the relevant norms, still mainly under the predecessor of the current directive 2008/50/EC, had a strong focus on PM₁₀ dust particles. Specifically aiming on these emissions, a system of different categories of vehicles was established, marked with stickers of different colours, alongside the establishment of so-called environmental zones in certain areas, mostly inner cities of larger towns, into that, depending on the specific situation, the more polluting categories of vehicles were not allowed to enter (Umweltzone Environmental Zone). So far, the system worked quite well.

Nevertheless, when other substances got more into the focus, it soon became evident that the German system was not designed with these substances, like especially NO_x, in mind. In a significant number of towns, the limits of NO₂ have been exceeded regularly. Having said that, it has to be stressed that the underlying structure with air quality plans (cf. question I.2. for more details on the German legislation) has always demanded for a comprehensive strategy of the individual competent administrative authority to achieve sufficiently clean air, according to the transposed limit values as they were given by the European legislator. Yet, the specific measures regarding traffic, especially the possibility to ban more polluting vehicles from more severely affected zones, were specifically designed to face the PM₁₀ issues. Although especially one NGO soon called for bans of Diesel vehicles, which are responsible for a large part of

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⁴ <http://data.europa.eu/eli/dir/2008/50/2015-09-18>

⁵ <http://data.europa.eu/eli/dir/2004/107/2015-09-18>

the NO₂ emissions, the competent administrative authorities hesitated to include bans of Diesel vehicles into the air quality plans claiming that the German law does not provide a sufficient legal basis for such specific bans. The political discussion about introducing another category of vehicles, to be marked with a further colour (blue), did not come to an end.

This (ongoing excess of limit values, stagnating political discussion and administrations hesitation - or reluctance - to introduce harsh measures against Diesel vehicles) lead to a still ongoing wave of court actions of a certain NGO demanding the administrative courts to order that the administration has to include bans of Diesel vehicles. After the first judgements of first instance courts had already pointed into this direction, the Federal Administrative Court made clear with its first judgements on this topic (BVerwG, judgements of 27 February 2018 - 7 C 26.16 and 7 C 30.17) that in a case in which a specific ban of Diesel vehicles is the only possibility to render the time of excess of the limits of NO_x as short as possible, it must be possible to enact such bans - as far as the ban is proportional. The court also gave several hints on how such a ban can be designed to be proportional, including exceptions for delivery traffic, considering the age of the concerned vehicles and some others. After these judgements, a significant number of court proceedings in lower instances were ended by mutual agreement. Nevertheless, there are still proceedings of this type pending although the main point of disagreement shifted from the very basic question whether bans are possible at all to the details of proportionality.

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

Despite an ongoing debate, one may assume, that the directives have now been implemented properly into German national law.

The main implementation of the directive consists of the 8th Act Amending the Federal Immission Control Act of 31 July 2010 (BGBl. I, 1059) and in the relevant by-laws on the topic, especially the 39th Ordinance implementing the Federal Immission Control Act (Order on Air Quality Standards and Emission Limits of 2 August 2010 (BGBl. I, 1065).

The 8th Act Amending the Federal Immission Control Act introduced major changes to section 47 of the Federal Immission Control Act (Bundes-Immissionsschutzgesetz - BImSchG). This statutory rule provides for the possibility and obligation of the competent administrative authority to establish air quality plans for specific zones or agglomerations - in practice, these are mostly urban ones - where certain limit values are exceeded in order to achieve the demanded limit values. It also provides for the duty of the competent authority to establish short-term action plans if the levels of specific pollutants will exceed certain alert-thresholds. These specific limit values and alert-thresholds for different substances, like among others PM₁₀ dust particles and NO_x, as given by the annexes of directive 2008/50/EC, are transposed into German law nowadays by the 39th Ordinance implementing the Federal Immission Control Act (39. Bundes-Immissionsschutzverordnung - 39.

BImSchV). The air quality plans and/or short-term action plans are - also by German law - supposed to contain all the necessary and adequate measures needed to achieve a level of air quality demanded by the 39th Ordinance and this by the directives.

Although the normative programme of the directives is may be considered as being transposed correctly into national German law, the application of this law still seems to pose some difficulties as in a (decreasing) number of towns where especially the limits for NO_x are still exceeded (c.f. question I.1). Following the judgements of the Federal Administrative Court of 27 February 2018 (BVerwG, judgements of 27 February 2018 - 7 C 26.16 and 7 C 30.17) that made clear that the German law enables the administrative authorities to ban certain motor vehicles according to their emissions, which in practice means that older Diesel cars may be banned, as long as the principle of proportionality is respected, the legislator tried to render the conditions of proportionality clearer. In this attempt, section 47 of the Federal Immission Control Act was amended again and a paragraph added that states that bans of motor vehicles with compression-ignition engines (i.e. Diesel vehicles) due to an excess of NO₂ levels are in *general* only eligible in zones where the annual average level of NO₂ in the air is higher than 50 µg/m³. The law also provides for a list of vehicles that are to be excluded from the ban like newer vehicles, buses, delivery vehicles and so on. Yet, especially by the addition of the "in general"-phrase, it is clear that by this rule the limit value of 40 µg/m³ was not supposed to be changed. This was also stressed by the judgement of the Federal Administrative Court of 27 February 2020 (BVerwG, judgement of 27 February 2020 - 7 C 3.19) that also rendered the requirements under the principle of proportionality clearer.

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

Yes, the Commission brought an action against the Federal Republic of Germany on 11 October 2018 to the European Court of Justice (Case C-635/18), aiming at the declaration of the Court of Justice that Germany has breached its obligations under Article 13(1) of, in conjunction with Annex XI to, Directive 2008/50/EC by systematically and continuously exceeding the annual limit value for nitrogen dioxide (NO₂) in 26 zones of air quality assessment and that Germany has failed to fulfil its obligations under the second and third subparagraphs of Article 23(1) of, in conjunction with Section A of Annex XV to, the same directive and in particular the obligation to keep the exceedance period as short as possible in the 26 zones in question. The case is still pending.

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.)?

Yes, as explained in question I.1. there is case law of German administrative courts including the Federal Administrative Court which relied on the directive and mostly the obligation of member states to keep the exceedance period as

short as possible as set out in Article 23 (2) of the directive 2008/50/EC. Applying this obligation, together with the precise limit values and the (already past) time limits to reach the limit values, the Federal Administrative Court ruled that, although the German national law might not be specifically designed to include bans of Diesel vehicles, this must be possible under European law.

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

The specific difficulty to enforce the before mentioned type of judgements is that the enforcement is to be directed against the state. The obligation ruled out in the judgements, which are of interest here, is that the administrative authority has to develop or modify its air quality plans in a way that they include bans on (certain) Diesel vehicles. As some administrations were still hesitating to include this rather harsh measure even after the first judgements of the Federal Administrative Court - probably also for the uncontested reason that the values for especially NO₂ have been going down anyway during the last years and more and more of the concerned towns achieved sufficiently low values without bans on specific vehicles - the possibility of enforcement actions against the state to make him set up or change accordingly these plans are limited. According to German law, the main possibility is to order a penalty payment (the state has to pay to the state). The idea to have certain responsible politicians to be arrested until they enact the demanded measures, was dismissed after a judgement of the European Court of Justice answering a preliminary question asked by the Bavarian Higher Administrative Court (BayVGh, decision of 9 November 2018 – 22 C 18.1718). The ECJ declared that the enforcement of national judgments is basically a matter of national law and that the European law does not demand specific enforcement measures (ECJ, judgement of 19 December 2019 - C-752/18). Nevertheless, the European Court of Justice left some space for possible further obligations from European law in exceptional cases, although the case at stake was not addressed as such an exceptional case.

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

In the vast majority of known cases, it is a certain NGO that brings actions against the competent administrative authorities demanding that they include bans on Diesel vehicles into their air quality plans. Additionally, there are - after the air quality plans of some administrations were amended to include bans on Diesel vehicles - actions of individual private persons against the bans of Diesel vehicles as well as attempts of the involved states to make the courts suspend the bans.

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)?

Yes, as already explained in question I.4.b) there have been actions of individuals and of the concerned states to withdraw or suspend the bans of the individually owned Diesel vehicle or of the ban in general. As to the best knowledge of the author, none of these attempts has been successful so far. In an individual case a constitutional complaint was not accepted for decision by the Federal Constitutional Court (BVerfG, decision of 1 October 2019 - 1 BvR 1798/19) after both the Administrative Court of Stuttgart and the Higher Administrative Court of Baden-Württemberg (VGH BW, decision of 5 July 2019 - 10 S 1059/19) dismissed the application of the individual in an injunction procedure.

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?

As to the understanding of the editor, sanctions provided for by the German legislation in this context are of a general kind and do not specifically refer to the part of the law that is transposing European law. There are no specific sanction aiming at the competent authorities. Nevertheless, an individual officer may be subject to sanction if he or she commits an individual offence. Sanctions in the wider field of environmental law range from administrative offence that lead to a fine up to criminal offences that may even lead to imprisonment. Yet, it must be noted that the administrative jurisdiction in Germany does not deal these with offences, including the cases in which administrative sanctions are at stake. Both criminal and administrative offences are dealt with by the criminal courts in Germany.

As to the best knowledge of the editor, there are no case law statistics or statistics on the application of penalties outside court proceedings available.

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 pollutants⁶ (Sanmann-Schöne)

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 (EU) 2016/2284 has been implemented by the Forty-Third Ordinance for the Implementation of the Federal Immission Control Act (Regulation on national Obligations to reduce the Emissions of certain Air Pollutants). The Ordinance came into force on 31.07.2018.

No stricter emission reduction commitments have been introduced.

So far it has not been necessary to adapt national legislation to meet the reduction commitments.

The national Clean Air Programme was adopted on 22. 05.2019.

The current Clean Air Programme shows that the targets for 2020 could be met without further measures. From 2025, however, the measures adopted will not be sufficient to achieve the nitrogen oxide and ammonia targets, and from 2030 additionally the particulate matter and sulphur dioxide targets. Legal changes will also be necessary to implement the measures.

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

There have been no infringement proceedings so far.

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

There is no case law referring to the Directive so far.

In May 2020, an NGO, the Deutsche Umwelthilfe e.V., has brought action against Germany before the Upper Administrative Court Berlin - Brandenburg, claiming that the national air pollution control programme, adopted on 22 May 2019, fails to comply with Directive (EU) 2016/2284.

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 vehicles⁷ 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

⁶ <http://data.europa.eu/eli/dir/2016/2284/oj>

⁷ <http://data.europa.eu/eli/dir/2007/46/2019-09-01>

passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information⁸ (Thomann)

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

Preliminary note:

From September 1, 2020, Regulation (EU) 2018/858 of the European Parliament and of the Council of May 30, 2018 (on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, amending Regulation (EC) No 715/2007 and (EC) No 595/2009 and repealing Directive 2007/46/EC - approval and market surveillance regulation - GMV) will replace Directive 2007/46/EC. The GMV is currently strengthening the authority to intervene across the European Union. The statements on Directive 2007/46 / EC have therefore more of a legal-historical character.

Regarding Directive 2007/46 / EC:

Directive 2007/46 / EC was implemented in Germany by the ordinance on the EC approval for motor vehicles and their trailers as well as for systems, components and independent technical units for these vehicles (EG vehicle approval regulation - EG-FGV) from February 3, 2011 (Federal Law Gazette I p. 126), which was last amended by Article 7 of the Ordinance of March 23, 2017 (Federal Law Gazette I p. 522).

Art. 46 Directive 2007/46/EC obliges the member states to regulate sanctions. In the reasons for the EG-FGV the following is stated: "A number of violations of the obligations of the license holder can already constitute criminal offenses in German law. As a result of the EG-FGV was changed the Vehicle Registration Ordinance, the Road Traffic Licensing Ordinance and the Schedule of fees for measures in road traffic." Pursuant the reasons for the EG-FGV, Article 46 of Directive 2007/46 / EC is also implemented by § 37 EG-FGV. This provision defines the facts that can be punished as an administrative offense with a fine. It is controversial whether the sanctioning system according to Art. 46 Directive 2007/46/EC has been adequately implemented (Deutscher Bundestag, Unterabteilung Europa, Fachbereich Europa, Ausarbeitung: Sanktionsmöglichkeiten aufgrund von Abschaltvorrichtungen - Vorgaben des Unionsrechts, 2017, S. 5 ff.).

Regarding Regulation (EC) No. 715/2007:

The Regulation (EC) No. 715/2007 generally does not require implementation (Art. 288 (2) Sentence 2 TFEU). However, Article 13 of Regulation (EC) No 715/2007 stipulates that Member States must impose sanctions for manufacturers' violations of the regulation and take the measures necessary to apply them. This regulation cannot be applied directly as a sanction norm, because of its content it needs to be implemented. It is also controversial if sufficient implementation has taken place (Deutscher Bundestag, Unterabteilung Europa, Fachbereich Europa, Ausarbeitung:

⁸ <http://data.europa.eu/eli/reg/2007/715/2012-06-04>

Sanktionsmöglichkeiten aufgrund von Abschaltvorrichtungen - Vorgaben des Unionsrechts, 2017, S. 7).

The German federal government is considering that there would be possibilities for a state reaction to violations from the EG-FGV when referring to sections 7, 25, 27 and 37 EG-FGV. Section 7 EG-FGV regulates the expiry of the EG type approval. Section 25 EG-FGV contains provisions on the revocation and withdrawal of EC type approval, Section 27 EG-FGV on the registration and sale of motor vehicles. Only Section 37 EG-FGV provides sanctioning regulation in the narrower sense (Deutscher Bundestag, Unterabteilung Europa, Fachbereich Europa, Ausarbeitung: Sanktionsmöglichkeiten aufgrund von Abschaltvorrichtungen - Vorgaben des Unionsrechts, 2017, S. 8).

The Commission's legal view cannot be clearly defined. In a further treaty violation proceeding, the Commission criticized the lack of enforcement measures in relation to Art. 13 of Regulation (EC) No. 715/2007 by the Federal Republic of Germany. According to a press release dated December 8, 2016, the Commission has initiated treaty violation proceedings against seven Member States for the failure to transpose or enforce Directive 2007/46/EC and Regulation (EC) No. 715/2007. As laid down in the press release, the Commission accuses three Member States of failing to introduce sanctions systems in their national law under Article 46 of Directive 2007/46/EC and Article 13 of Regulation (EC) No 715/2007. The Federal Republic, like three other countries, is accused of not having applied the national provisions on sanctions, although Volkswagen used illegal shutdown devices. It is not clear from the press release whether and, if so, by which standards the Commission sees Article 13 of Regulation (EC) No. 715/2007 implemented in German law (Deutscher Bundestag, Unterabteilung Europa, Fachbereich Europa, Ausarbeitung: Sanktionsmöglichkeiten aufgrund von Abschaltvorrichtungen - Vorgaben des Unionsrechts, 2017, S. 9 f.).

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.)

Please give examples.

Section 25 (3) No. 2 EG-FGV allows the Federal Motor Transport Authority to withdraw an illegal type approval in whole or in part, especially if it is determined that vehicles with a certificate of conformity do not match the approved type, or vehicles pose a significant risk to the traffic safety, public health or the environment. Increased nitrogen oxide emissions represent such a considerable risk. There is no protection of trust, since the type approval was obtained through fraudulent deception (cf. Section 48 (2) Sentence 3, Section 48 (3) Sentence 2 VwVfG; VG Stuttgart, decision of April 27, 2018 - 8 K 1962/18 [ECLI: DE: VGSTUTT: 2018: 0427.8K1962.18.00] -, juris Rn. 17; VG Düsseldorf, judgment of January 24, 2018 - 6 K 12341/17 [ECLI: DE:

VGD: 2018: 0124.6 K12341.17.00], juris Rn. 271; with reference to these decisions BGH, judgment of 25 May 2020 - VI ZR 252/19 [ECLI: DE: BGH: 2020: 250520UVIZR252.19.0]).

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.

Please give examples.

Criminal law:

As far as can be seen, various criminal proceedings have been initiated against decision takers / managers of the manufacturers (investigative proceedings against persons of the VW Group, Audi AG, Daimler AG, Robert Bosch GmbH and Continental AG) and have now also been partially closed with the condition to pay a sum of money to the treasury. In Germany, it is not possible to take criminal measures against the companies themselves.

Administrative law:

Due to violations of supervisory duties (Section 130 OWiG), fines have been imposed on German manufacturers as follows:

- VW: one billion euros (public prosecutor's office Braunschweig)
- Audi: 800 million euros (public prosecutor's office Munich II)
- BMW: 8.5 million euros (public prosecutor's office Munich I)
- Porsche: 535 million euros (public prosecutor's office Stuttgart)
- Daimler: 870 million euros (public prosecutor's office Stuttgart)

The responsible Federal Ministry (Federal Ministry of Transport) has so far refused to comment, why the allegedly threatened fines in billions have not yet been imposed. In the meantime, it has been legally sentenced to provide further information on this (Higher Administrative Court Berlin-Brandenburg, decision of 05 February 2020 - OVG 6 S 59.19 -, juris).

Private law:

At the civil law level, a distinction must be made between procedures of shareholders of manufacturers who make claims under capital market law and car buyers who make contractual or tortious claims. Only the buyer-manufacturer relationship is relevant. In civil law, there is usually no connection between the buyer and the manufacturer, which is why there are usually no contractual claims. Now, however, the Federal Court of Justice has ruled that the buyer has tort law claims against the manufacturer if the buyer bought the vehicle before the "Diesel-Skandal" became known. The manufacturer is liable according to § 826 BGB because the manufacturer has deliberately deceived the Federal Motor Transport Authority and also the individual buyers through the switch-off devices. This is accompanied, on the one hand, by an increased nitrogen oxide pollution in the environment and, on the other hand, by the risk of the vehicle being shut down for the buyers of the vehicles (BGH, judgment

of 25 May 2020 - VI ZR 252/19 [ECLI: DE: BGH: 2020: 250520UVIZR252.19.0]).

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

We have no information about this topic.

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

Please provide a concise overview of cases of particular interest.

The Federal Motor Transport Authority (“Kraftfahrtbundesamt”) is responsible for the so-called market surveillance. It ensures that public interests such as health and safety are protected, and that consumer and environmental interests are taken into account.

In January 2017, the Federal Motor Transport Authority received its fifth specialist department in the shape of the department for “Market surveillance”. Their task is to implement the requirements of different European and national directives, regulation and laws for the area of road vehicles. These include both the legal basis for the market surveillance of products (among others the German Product Safety Act, VO (EU) 167/2013, VO (EU) 168/2013, VO (EU) 765/2008, RL 2001/95/EC, RL 2007/46/EC, StVG) as well as the legal foundations of the type-approval of vehicles and vehicle parts, which are primarily used in the area of compliance verification.

Active market surveillance is based on the findings of the Federal Motor Transport Authority. This means activities that are planned, organized and carried out in a targeted manner without there being any direct external reason. This includes long-term planned market surveillance campaigns for certain products or product groups or in certain areas, e. g. fairs or via internet. Active market surveillance is therefore a prepared campaign with specific objectives. As part of active market surveillance, the Federal Motor Transport Authority conducts its own research with regard to unauthorized vehicle parts, especially on the Internet.

The reason for a reactive market surveillance is the information received from outside as well as based on own research. The reactive market surveillance responds to current events, e.g. accidents, complaints, defect reports, etc. and where appropriate necessary market surveillance measures are initiated. The Federal Motor Transport Authority is largely dependent on information from outside. It is particularly due to current events, e. g. accidents, complaints, defect reports, etc. Information is also taken from reports from the public (e.g. newspapers, news).

If the Federal Motor Transport Authority becomes aware of a suspicion of irregularity, whether through active or reactive market surveillance, the Federal

Motor Transport Authority examines the corresponding suspicion. The inspection is carried out by the Federal Motor Transport Authority itself (as part of field monitoring or conformity testing) or by technical services commissioned by the Federal Motor Transport Authority. If the products do not meet the requirements, measures can be taken. If security-relevant defects are present, this includes measures such as recalls and ordering public warnings. The Federal Motor Transport Authority can also order sanctions for administrative offenses.

[Quote: Federal Motor Transport Authority,
https://www.kba.de/DE/Marktueberwachung/Markueberwachung_allgemein/marktueberwachung_allgemein_node.html]

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?

Please give examples.

If the Federal Motor Transport Authority determines that vehicles, systems, components and independent technical units do not match the approved type, it can arrange necessary measures according to Section 25 (1) of the EC Vehicle Licensing Regulation (EG-FGV) in accordance with the guidelines applicable to the respective type to ensure conformity of production with the approved type. Pursuant to Section 25 (2) EG-FGV, it can retrospectively issue additional provisions to remedy any defects that have occurred and to ensure that vehicles, independent technical units or components that are already in circulation are compliant with the regulations. According to Section 25 (3) No. 1 EG-FGV, it can finally revoke or withdraw the type approval in whole or in part. This is particularly possible if it is determined that vehicles with a certificate of conformity or independent technical units or components with a prescribed marking do not have the approved type to match.

In the case of vehicles with engines with a shutdown device, the Federal Motor Transport Authority has imposed on the manufacturers of the vehicles, on the basis of Section 25 (2) EG-FGV, by means of subsequent ancillary clause to the type approvals, the obligation to remove the inadmissible shutdown devices - even for vehicles that are already in traffic. Moreover, the manufacturers have to take appropriate measures such as take appropriate recall actions to restore compliance and demonstrate this by providing evidence. It further pointed out that the Federal Motor Transport Authority was entitled, in the event of non-compliance, to revoke or withdraw part or all of the type approvals (VG Stuttgart, decision of April 27, 2018 - 8 K 1962/18 [ECLI: DE: VGSTUTT: 2018 : 0427.8K1962.18.00] - juris; see also VG Düsseldorf, judgment of 24.01.2018 - 6 K 12341/17 - juris and Schleswig-Holsteinisches VG, judgment of 13.12.2017 - 2 A 59/17 - juris).

IV. Domestic Law

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

Air pollution control in Germany is based on three pillars:

- Determination of air quality standards (air quality plans, emission control system approval)
- Emission-limiting requirements (for emission-relevant sources according to the state of the art or best available technology and in some cases also product bans)
- Determination of maximum emission levels (by limiting the national emission loads for relevant mass pollutants)

Air pollution control takes into account all relevant sources and pollutants and combats air pollution from many sides, some important instruments are:

- Quality of fuels (e.g. sulfur content in petrol and heating oil) and feed materials (e.g. low-solvent paints)
- State-of-the-art emission limit values for individual sources (from motorcycles to power plants)
- Type tests for small sources (cars), approval procedures for large plants and road construction projects, regular monitoring of emissions
- Area-wide, continuous monitoring of air quality (immission concentrations) through measuring networks and increasingly through model calculations and satellite observation
- Immission limit values and regulatory mechanisms if the limit values are exceeded (air quality plans, action plans)

[Quote: Federal Environment Agency,
<https://www.umweltbundesamt.de/themen/luft/regelungen-strategien/nationale-luftreinhaltung#grundlegende-betrachtung-zur-luftreinhaltung>]