

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?

No data on this issue.

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

The directives were properly implemented in Hungary. No stricter or complementary air quality standards have been introduced.

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

There has been an infringement proceeding against Hungary in relation to 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. The formal notice was sent on 16/07/2010, the case was closed on 19/05/2011.

Another one is currently pending (COM v Hungary (PM10) (C-637/18)) for exceeding the limit values imposed by the directive.

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.)?

I have found one case in the database of the Supreme Court that relied on 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 about the content of air quality plan.

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

No data on this issue.

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

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

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

In the above-mentioned case the local government was the plaintiff. The subject of the court procedure was the review of a local government's decree.

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)?

No cases found on this issue in the Supreme Court's database.

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?

Sanctions are stipulated in the transposing national legislation.

- Are the sanctions directed explicitly or implicitly against competent authorities? Are the sanctions addressed to private natural and legal persons and/or economic operators?

Sanctions can be imposed against private persons, legal persons, and against legal persons without legal status.

- Are the sanctions of administrative or criminal nature or both? What is their range?

Both administrative and criminal nature. The range depends on the nature of breach of obligations.

- Are the sanctions established as a function of obligations stemming from sources legislation? If so, how is that articulated in national law?

Sanctions are imposed (together with obligations) to promote terminating illegal activities.

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

No statistics is available on this issue.

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

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

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 was properly implemented in Hungary through the amendment of the Governmental Decree 306/2010. on the protection of air. National legislation was adopted to meet the emission reduction commitments.

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

No infringement proceeding was brought against Hungary in relation to this directive.

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

No cases found on this directive in the Supreme Court's database.

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?

The rules were implemented through the amendment of the Ministerial Decree 5/1990. on the technical examination of vehicles and Ministerial Decree 6/1990.

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.)

The law does not stipulate any such specific regulations, there are general provisions on sanction.

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.

First the repetition of the control within two months, after the withdrawal of the approval.

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

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

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

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

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?

IV. Domestic Law

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