

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?

Please give examples.

Directive 2008/50/EC was implemented in Italy by d.lv. 152\2010, which contains a uniform complex of rules on air quality evaluation and management, unifying in a single text some laws previously included in other regulatory provisions now repealed.

Directive 2004/107/EC was implemented in Italy by d.lv. 152\2007, later repealed by the d.lv. 152/2010, which also took its place.

There obviously were problems in fulfilling the obligations, set out in these directives, sure enough the EU Commission referred Italy to the Court of Justice of the EU as you can see below.

D.lv. 152\2010 does not set specific rules about civil or penal responsibility in case of non-compliance or relevant follow-up, however some actions are possible according to the general rules.

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

D.lv 155\2010 allows the Regions to carry out evaluation and planning activities in order to know the national situation and to find the most effective measures for respecting air quality values and ensuring its implementation.

D.lv. 155\2010 stipulates that the Regions:

- divide the territory into zones and agglomerations for the purpose of assessment of ambient air quality;*
- provide for the assessment of air quality;*
- draw up, in consultation with the local authorities, air quality plans, and the measures necessary to comply with the limit values;*
- adopt plans to reduce the risk of the limit values being exceeded;*
- take the necessary measures to comply with PM 2.5 and ozone limits;*
- take the necessary measures to inform promptly people about the exceeding the alarm limits;*
- communicate data on non-compliance with limit values*

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

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

*The coordination of the activities of the Regions is entrusted to an institutional committee where Ministries and other organizations are involved.
In order to reach good results it also was allocated funds*

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

In 2018, the EU Commission referred Italy (and other Member States) to the Court of Justice of the EU for failing to respect agreed air quality limit values and for failing to take appropriate measures to keep exceedance periods as short as possible (case C-644/18). Italy, in particular, was referred to the Court of Justice over persistently high levels of particulate matter (PM10).

In 2019, Italy was referred to the Court of Justice again. This case (C-573/19) concerns air pollution, and a failure to protect citizens against the effects of nitrogen dioxide (NO₂).

Both cases are still in progress.

In 2019 Italy promulgated a decree converted into law n. 141\2019 in order to solve its problems with the EU Commission

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.)?

There are only 2 cases involving D.lv. 152\2010.

These cases concern car pollution and installation of air quality measuring devices for plants that produce emissions into the atmosphere.

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

No

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

The first case was debated in the Administrative Court of Sicily and the claimants were a trader associations (merchants and tour operators) asking to revoke a car ban.

The second case was debated on the Constitutional Court and claimant was the Government. They asserted that a Regional law concerning installation of air quality measuring devices for plants that produce emissions into the atmosphere exceeded the limits of local laws.

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)?

In the first case claimants affirmed that the car ban was useless as the air quality value remained the same.

They also affirmed that the car ban did not consider the different type of car fuel (diesel or petrol) and the different anti-pollution standards (Euro1, Euro 2 etc.).

The Administrative Court rejected the petition.

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?

There are not sanctions specifically stipulated in the transposing national legislation, however it is possible to apply sanctions of a general kind established in the d.lv. 152\06, which is one of most important environmental law and in the penal code (it depends on every specific case).

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

Normally, sanctions are addressed to private natural persons

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

The sanctions are both administrative and criminal in nature. Their range depends on the specific case.

It is not possible to offer any example because this cases can be solved with an adjustment of other laws

- 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?

No

If possible, please provide an overview of cases of particular interest.

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?

Directive (EU) 2016/2284 was implemented in Italy by d.lv. 81/2018, in order to improve air quality through:

- national commitments to reduce anthropogenic emissions of sulphur dioxide, nitrogen oxides, non-methane volatile organic compounds, ammonia and fine particulate matter;

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

- development, adoption and implementation of national air pollution control programmes;
- monitoring obligations for emissions of the pollutants identified in Annex I;
- monitoring requirements for air pollution impacts on ecosystems;
- reporting obligations and information related to compliance with the provisions referred to in the previous points;
- more effective information for citizens using all available information systems.

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

No.

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

No.

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?

Directive 2007/46/EC was implemented in Italy by d.m. 28 April 2018 This decree establishes a harmonised framework containing administrative provisions and general technical requirements for the type-approval of all new vehicles included in the scope of this Directive and their systems, components. It also view to simplifies registration, sale and entry into service within the national territory and the European Community.

This decree also lays down provisions for the sale and entry into service of parts and equipment.

Specific technical requirements relating to the construction and operation of vehicles shall be established in application of this decree with normative acts of which the exhaustive list is in Annex IV.

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.)

Some media reported that vehicles (lorries mostly) are equipped with special software in order to manipulate the control unit in order to decrease the usage of AdBlue liquid (a liquid solution of urea which when it meets a hot exhaust system it releases ammonia which is a

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

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

catalyst to a chemical reaction that converts dangerous Nitrogen Oxides into two harmless products – water vapour and Nitrogen).

In this cases the vehicle warranty is no longer valid and the owner could be fined up to 431 euros and vehicle registration certificate can be withdrawn and returned only after an extraordinary inspection in order to verify that the vehicle is reset to factory conditions.

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.

No examples.

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

A vehicle should respect the Euro 6 standard. A vehicle with lower standard could not access in some areas.

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

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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?

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IV. Domestic Law

See above