

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?

Air protection as an important part of the environment is crucial from the point of view of the subject of protection. This subject influences people's lives significantly. Fulfilling the obligations set out in the directive has not been an easy task because the effect can only be seen after a long time as it is a long-term effect. The meaning of fulfilling the obligations set out in the directive had not only the introduction of relevant legal solutions but, first and foremost, a change in social approach and social behavior. It was easier to fulfill the obligations regarding emission of negative particles in the air stemming from industrial activity, then to limit these emissions from households.

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

The directive was implemented in the Polish law. Its content was included in Nature Conservation Act. Moreover, based on this legal act many regulations were issued by relevant Ministers (for example: Nature Conservation Act, Climate Protection) and these regulations were clarified in the content of the legal act.

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

In February 2008 the Court of Justice of the European Union stated that Poland infringed the directive 2008/50/EC on Ambient Air Quality and Clean Air for Europe through by exceeding constantly the concentration of MPM10. In May 2020 the European Commission decided to start proceedings against Poland regarding the lack of regulations based on which the authorities could be sued in relation to the low quality of air.

4. 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.)?

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

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

These directives were included in Nature Conservation Act and based on this legal act many regulations were issued by relevant Ministers. Among these regulations are:

- regulation of the level of certain substances in the air
- regulation of the way to calculate indicators of average exposure and the way to assess the maintenance of the level of concentration of exposition.
- regulation of the list of cities exceeding the value of concentration level
- regulation regarding the national target of reducing exposure,
- regulation regarding zones in which the assessment of air quality is done
- regulation regarding making the assessment of the level of substances in the air
- regulation regarding programs on air protection and short-term plans of action
- regulations regarding the scope and way of disseminating information about air pollution.

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

In general, there were no difficulties with enforcing the judgments. The only problematic issue was if NGOs can be a party in administrative proceedings and judicial proceedings regarding programs of environmental protection and in cases on issuing penalties for exceeding deadlines to make an act on an air protection program.

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

Claimants are both local authorities and private persons.

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, e.g. in the case of 20SK 1060/17 in which on March 12, 2019 the Supreme Administrative Court issued a judgment. Parties who were private persons demanded annulment of local authorities' act regarding Cracow where limits on substances were introduced which can be used in households to generate warmth. They did not agree with the exclusion of coal. The court of the first instance and the Supreme Administrative Court dismissed it.

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?

- These sanctions are directed at specific breaches aimed at transposition of national legislation.
- These sanctions are aimed directly at against competent authorities, for example, local authorities, and these are financial sanctions.
- These sanctions are addressed to private, natural and legal persons. They are of administrative or criminal nature.
- These sanctions were established in national law. They are administered based on criminal and administrative law. Moreover, you can demand a damage repair in civil code.
- In Poland there are no statistics regarding above-mentioned matters

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?

The directive was implemented in Poland. The national law regulating this matter is Nature Conservation Act. I have no knowledge of that.

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

I have no knowledge of that.

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

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

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

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?

This directive was implemented in Traffic Law Act.

2. I am unable to answer these questions. This is not my field of expertise. Moreover, in comparison to other countries, in Poland there is no function of a technical judge.

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