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Recent air quality litigation in Germany

The state of North Rhine-Westphalia appealed against the court rulings ordering driving bans in Aachen, Bonn, Cologne, Essen and Gelsenkirchen. Consequently, the Higher Administrative Court Münster is responsible now. In May 2019, the Court scheduled an expert hearing for two days and invited specialists from different fields. With a catalogue of questions, the court intended to achieve an entirely perspective on health effects of air pollution, measuring and modelling methods as well as on measures to reduce air pollution. Physicians, epidemiologists, urban planners and civil servants of the Environmental Agency of the State of North Rhine-Westphalia provided information and details about their expertise. The judge stated right at the beginning of the trial that cities had been neglecting the issue of clean air for years and that not enough attention had been paid to traffic planning. After two days of input the court resumed, that there is no doubt about the NO₂ limit value and the obligation of the competent authorities to respect them.

This expert hearing was a preparation for the hearings on Aachen in July and Cologne in September 2019. The Higher Administrative court ruled in both cases, that the state of North Rhine Westphalia has to update the air quality plans respectively in a way that they include backup-measures. If the air pollution develops worse than projected, those measures have to come into force immediately, without a new plan update being necessary. In case of Cologne, the judges stated that North Rhine-Westphalia has to asses driving bans for four streets taking into account a modelling of traffic shifting.

In other cities with significant exceedances of the applicable annual mean limit value for nitrogen dioxide, legal actions have been filed against the responsible authorities. Recently DUH filed lawsuits against the authorities responsible for air quality plans in the Bavarian cities Regensburg, Passau and Nuremberg. So far, there have been significantly fewer clean air lawsuits in Bavaria than in similarly populated federal states. That is not because the air quality would be better in Bavaria, but because the federal authorities do not measure air quality at the worst polluted places. The official air quality data thereby shows an euphemistic situation. Only by modelling on behalf of the cities itself or by measurements carried out by NGOs, the actual level of air pollution became public. As the federal Environment Agency refuses to update the air quality plans on basis of this data DUH filed the lawsuits.

The graphic on the right shows all 38 cities in which DUH is taking legal action against NO₂ air pollution above the legal limit values. Information about new legal actions throughout Europe can be found on www.right-to-clean-air.eu.



Verification of compulsory imprisonment by the European Court of justice

The EU's top court has discussed on 3 September 2019 whether consistent inaction on illegally dirty air could spell a jail term for Bavaria's Environment Minister. Repeated court victories and multiple fines have not compelled the Bavarian authorities to reduce illegal levels of nitrogen dioxide in Munich.

According to German administrative law, there are no enforcement measures that go beyond a maximum penalty of 10.000€ which have to be paid to the court and thereby remain in the state budget. The Court heard arguments from Deutsche Umwelthilfe, the Bavarian government, Germany's Federal government, and the European Commission. It became clear that far stronger measures would be necessary. While the possibility of a prison sentence was discussed, it has not yet been decided what the enforcement measures will ultimately be.

The barriers to an order for compulsory detention are very high, but there are other measures in the Code of Civil Procedure to which administrative courts may have recourse. These include, for example, higher penalties or the requirement that these penalties should not be paid to the state.

Citizen Science measurements in Europe

In May DUH launched the results of the third nationwide citizen science campaign "Abgasalarm". Once again, we received many responses with potential polluted spots. After checking all the spots, 417 sites were chosen to measure at. This time, the pollution was measured at 1 meter and 2 meter height. Within the campaign, 58 more "hot spots" of air pollution with the diesel exhaust poison NO₂ were identified. The highest NO₂ value was measured in Stuttgart with nearly 60 µg/m³ in front of a kindergarten.

Additionally, DUH measures NO₂ load in cooperation with regional NGO's in further polluted German cities like Nuremberg, Munich, Wuerzburg, Aachen, Gelsenkirchen, Bielefeld, Wuppertal, Mainz, Kiel, Hagen, Marbach, Limburg, Oldenburg, Bonn, Paderborn, Aachen, Bad Homburg, Oberweser, Darmstadt and Berlin. These measurements revealed more than 70 previously unknown spots with NO₂ pollution above the annual limit value.

In March, DUH started its international measurements in cooperation with partners in the Czech Republic. The measurements from March to April showed that 58 out of 192 measurements, showed concentrations above the European annual limit value of 40 µg NO₂/m³. In Prague, the air is particularly polluted with 32 exceedances and values up to 78 µg NO₂/m³. DUH and its partners presented the results throughout a media campaign in July. Additionally, press conferences in those five cities with the highest NO₂ concentrations took place. In Slovenia, we organized first measurements in Ljubljana. From 50 measurements, almost half of the spots overstep the limit value with very high values up to 74 µg NO₂/m³. DUH started measurements also in Bulgaria, Serbia and Poland. These results will be published in October.

All NO₂ hotspots and further information, as well as a detailed new interactive map, are accessible on our homepage which was relaunched in May 2019: <https://www.duh.de/no2airpollution/>.

If you are interested in more information or a cooperation with DUH in this issue, please contact Hanna Rhein rhein@duh.de

Fireworks and particulate matter (PM10) - DUH demands restrictions for private New Year fireworks and firecrackers

Every year at the end of the year, the public discusses high air pollution levels due to fireworks and New Year's firecrackers. The ignition of fireworks releases up to 5,000 tons of particulate matter in just a few hours during New Year's Eve in Germany. This corresponds to about 16 percent of the total amount of particulate matter generated by road traffic within one year. In these few hours, the concentration of particulate matter is much higher than at any other time of the year. Regarding the well-known negative health impacts of particulate matter, fireworks are a high risk for those who are already affected by health damages. The World Health Organization (WHO) recommends in its Air Quality Guideline an annual limit value of only 20 $\mu\text{g}/\text{m}^3$ for particulate matter. The European wide legal threshold is 40 $\mu\text{g}/\text{m}^3$.

The DUH wants to raise the awareness on the fact, that people risk very serious health damages every year and sent letters to municipalities and responsible authorities of the states to claim for restrictions of private firework ignitions. To point out legal possibilities for restriction, DUH has commissioned a law firm to examine legal possibilities for the restriction of private fireworks for municipalities and federal states. These letters have met great public interest, have stimulated discussions on the subject throughout Germany. and many municipalities want to check their possibilities, although there is skepticism about feasibility and surveillance of the restrictions. . DUH will continue to promote restrictions and will provide information about alternative ways to celebrate without private fireworks, e.g. with light shows or with a public firework organized by the municipalities.

Events on legal actions within the LIFE project Right to Clean Air

This year's Green Week hosted by the European Commission in Brussel focused on the implementation of environmental legislation. A great chance for DUH to present its LIFE Legal Action Project and its work on implementation of every Europeans right to clean air. During the three days fare in May 2019 we had the chance

to meet European stakeholders, civil servants and project employees engaged to put environmental legislation into effect. Within lively discussions and objective conversations some fruitful insights and perspectives where exchanged. The DUH Team also had the chance to meet Director General Daniel Calleja of the DG Environment, the European Commission department responsible for EU policy on the environment and to discuss the importance of civil society for the implementation of EU directives in EU member states.



In June, we organized two more capacity building workshops in Amsterdam (Netherlands) and Madrid (Spain) with our cooperation partners Milieudefensie and Ecodes. The next and last workshop within this project will take place in Sofia on 3 October 2019. After the workshop in Amsterdam, a civil group initiated a crowdfund to get funding for a civil lawsuit against the city of Amsterdam and the state. To support this important initiative, to donate and to stay updated, check the website: <https://www.schonelucht.amsterdam/>.

You can't stop breathing –short film on air pollution

Air pollution is not the problem of some isolated hotspots or particular group of persons. Recent data shows that we face a problem that covers entire cities, including smaller ones and suburbs. We produced a short clip to raise the awareness of the fact, that everyone is affected.

Have a look here:

<https://www.youtube.com/watch?v=PtNzqJGOGhU>



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