

Project-newsletter #7 / 29.11.2019

As the LIFE 'Legal Actions' project comes to its end, this will be the final project newsletter. Nevertheless, the project team will continue to provide relevant information to those who are interested. Since we are obliged to comply with the Data Protection Regulation, however, we must obtain your explicit consent. Thus, we ask you kindly to write a short notice to kulpa@duh.de if you want to receive further information on legal action and the right to clean air. Of course we will continue our litigations and keep you up to date on several national and European network events.

Citizen Science measurements in Europe

In many Central and Eastern European countries, particulate matter is an important issue, but air pollution with nitrogen dioxide from road traffic does not receive the attention it deserves. This is mainly due to poor air quality monitoring. According to official figures, in many CEE countries there is no problem with nitrogen dioxide in the air. This problem will continue to increase in the future with the export of old diesel vehicles from Western Europe and is already a serious problem. This is shown by new data, measured by DUH in cooperation with NGOs in different countries. So far, measurement results from Czech Republic, Slovenia, Bulgaria, Serbia and Poland are available. Particularly bad are the values from Serbia with NO₂ hotspots of up to 131 µg/m³ on monthly average. Pollution above 70 µg/m³ was measured in all other target countries. These results clarify that the diesel exhaust gas NO₂ is a problem in highly frequented urban areas regardless of the country. The data shows impressively, that the existing monitoring stations are not located in the most polluted areas - which is mandatory, referring to the European Court of Justice. Improved air quality monitoring is still needed to inform citizens and to reveal bad air quality in Europe.

All the NO₂ hotspots will be published on a regular basis in our [NO₂ Report](#). If you are interested in more information or a cooperation in this issue, please contact [Hanna Rhein](#).

Recent air quality litigation in Germany

After recent rulings for the North Rhine-Westphalian (NRW) cities Aachen and Cologne, the Higher Administrative Court Münster, which is responsible for all cases in NRW, encouraged talks between DUH and the government of NRW to elaborate settlement agreements. DUH is optimistic to achieve agreements regarding the cities Essen, Bonn, Wuppertal, Dortmund, Bochum, Paderborn, Bielefeld, Gelsenkirchen, Oberhausen, Düsseldorf, Düren and Hagen. This prevents the defendant from appealing against any judgement. The international environmental NGO ClientEarth supports DUH in seven of these cases.

In October 2019, DUH filed a lawsuit against the air quality plan of the city Fürth. The lawsuit is based on previously non-public data, we received as answer to a request for environmental information. The data shows NO₂-pollution of 67 µg/m³ in 2018, a pollution publicly unknown so far. Nevertheless, the Bavarian Environment Agency refuses to update the air quality plan for Fürth.

The Higher Administrative Court Mannheim ruled in March 2019 that the responsible authorities have to update the air quality plan for Reutlingen. As the state



Baden-Württemberg appealed, the case will be heard by the Federal Administrative Court in Leipzig next year. ClientEarth supports DUH in this case.

We were able to settle the lawsuits against the cities of Marbach and Halle, as the NO₂ values decreased well below the limit values. The lawsuits contributed to the implementation of measures, which helped to achieve improvements of air quality.

The graphic shows all 39 cities in which DUH took legal action against NO₂ air pollution above the limit values. Information about legal actions throughout Europe can be found [here](#).

New EEA Report on Air Quality

In October, the European environmental Agency published its annual report on air quality in Europe. The report 2019 shows a slow improvement of air quality across Europe and hence a declining of the associated disease burden. The premature deaths in EU member states attributed to nitrogen dioxide (NO₂) decreased from 76.000 in 2015 to 68.000 in 2016, attributed to particulate matter (PM_{2.5}) from 391.000 2015 to 374.000 in 2016. Nevertheless, air pollution is still a huge threat and health risk needs to be tackled. Therefore, it's necessary to force the authorities to implement more efficient and ambitious measures to reduce the pollution. Find more information [here](#).

Handbook of emission factors - New version and new data

On 11 September 2019 the new Handbook Emission Factors for Road Transport (HBEFA) version 4.1 was published. The HBEFA is the official emission factor database of several European countries and supported by the Joint Research Centre of the European Commission. Even when HBEFA is not the official emission factor tool in your country, the new developments are relevant, as intermediate tools such as COPERT or TREMOD are based on HBEFA emission factors. After the last version 3.3 was supposed to reflect the significantly increased emissions on the road after the diesel scandal became known, the now published version shows impressively that the extent of the diesel exhaust fraud was still underestimated.

The emission factors for all diesel passenger cars in emission classes Euro 3 to Euro 6c had to be adjusted upwards. On average, the assumed emission factors of promoted to be clean Euro 6 a-c diesel cars was raised by 108 mg/km to 630 mg/km. NO_x-emissions of only 80 mg/km would be permissible. The developments in heavy commercial vehicles are particularly alarming. The average NO_x emission factor for modern Euro VI trucks has tripled here. In inner-city operation, the values even quadruple.

Please contact kulpa@duh.de for further information, data and graphics.

Verification of compulsory imprisonment by the European Court of justice

The Higher Administrative Court in Bavaria asked the European Court of Justice (ECJ) to clarify whether consistent inaction on illegally dirty air could spell a jail term for Bavaria's authorities. In November 2019 the Advocate General of the European Court of Justice published his opinion and stated that the refusal of Bavarian public officials to comply with the final judicial decisions may have serious consequences not only for people's health and lives but especially for the rule of law, a very important value the European Union is founded on. Respect for the rule of law is required of all EU citizens, the Advocate general stated. Primarily this is the case for representatives of the State, which is why the behavior of the Bavarian state, is unacceptable. Due to the fundamental right of freedom and the lack of German law to foresee an imprisoning for the authorities responsible for air quality plans, the Advocate general recommended the decision to use all means available under national law. Higher penalties potentially recurring at short intervals or payment of those penalties to a third party, rather than to the federal state itself where mentioned. The final decision by the ECJ is expected in February 2020.

What is next?

Our litigations will be continued and we will keep you up to date on national and European network meetings. Besides the litigations for effective air quality plans and campaigning work for those procedures, we are also engaged in other air quality related topics. Therefore, we don't want to miss the chance to give a brief insight into our projects for fighting emissions from agriculture and residential burning:

Ammonia is causing the formation of secondary inorganic aerosols and methane is a precursor for ground-level ozone. Both pollutants are tackled by the EU-LIFE project [Clean Air Farming](#). The project promotes knowledge and techniques to reduce ammonia and methane emissions while encouraging the appreciation of meat and dairy products. The project team fights food waste and demands the implementation of strong measures to cut emissions in national air pollution control programs according to the NEC-Directive. If you want more information or to get active, visit the website or write to hellerstroem@duh.de.

Winter is the season for firewood stoves, which are considered as natural and cosy. In reality, residential burning is the biggest source of particulate matter and black carbon in Europe. In contrast to NO₂, there are almost no exceedances of the legal requirements for particulate matter at official measuring points at least in Germany and several other countries. Hence, legal action to push implementation of effective measures is impossible. However, the air isn't clean as the EU limit values for PM₁₀ and PM_{2.5} are much weaker than the WHO recommendation. Anyhow, cities and regions are able to act with stricter requirements for residential burning, e.g. banning certain fuels or make exhaust-cleaning technology mandatory. If you want more information about the EU-LIFE project Clean Heat, health and climate impact of wood burning and advance technical and political solutions, visit the [website](#) or write to huth@duh.de.

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