

## Project-Newsletter #03 / 13.07.2018

### Recent air quality litigation

In the last few months, there were very interesting developments in the clean air lawsuits. On 27 February 2018, the Federal Administrative Court (BVerwG) in Leipzig issued a decision in principle. The complaint concerns the revisions of the legal cases in Düsseldorf and Stuttgart, which now found a final clarification in front of the highest German court for administrative issues. The judges confirmed the legal opinion of DUH that diesel traffic bans are possible already today, while respecting the principle of commensurability.

In April 2018, DUH started legal actions in eleven further cities due nitrogen dioxide (NO<sub>2</sub>) pollution. DUH is now suing for better air quality in 28 cities in nine out of 16 federal states. The international environmental lawyers from ClientEarth support the cases of DUH. In its ruling of 8 June 2018, the Aachen Administrative Court effectively decided that diesel bans in Aachen must be implemented as of 1 January 2019. This first ruling after the decision in principle



of the BVerwG sets the course for the other legal proceedings of DUH, that will be heard within the following months.

In cities in which judgements have already been passed, courts are pushing for rapid implementation of air quality measures. On 28 June 2018, the Administrative Court in Stuttgart instructed the federal state to implement the decision of the highest court correctly. A first draft of the air quality plan with lots of exceptions and attenuations was not accepted in a hearing in court. The government was given a two-week deadline for rectification. Otherwise, the court announced to initiate the execution procedure requested by DUH.

### Funding criteria for bus retrofitting

As part of its Clean Air Program 2017 to 2020, the German Federal Government has issued a funding guideline for retrofitting diesel buses of the Euro III, IV, V and EEV emission classes in local public transport. Public Buses are regularly operating in dense city traffic under Stop-and-Go conditions. Diesel busses contribute to a considerable extent to the pollution with nitrogen dioxide. 91 municipalities affected by increased NO<sub>2</sub> levels can have this short-term effective measure funded. Up to 60 % of the costs are covered, which makes retrofitting considerably

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more attractive. DUH has campaigned for further improvement of the funding guideline. Among other things, approval by the EU has been requested to increase the funding quota to 80 %. Due to the high technical requirements set by the funding guideline, manufacturers have made further improvements on their deNO<sub>x</sub>-systems, so that new bus retrofitting systems reduce nitrogen oxide emissions by at least 85 %. This reduction rate must be achieved down to temperatures of -7°C, which is a great success of the funding guideline. The combination of ambitious cleaning efficiency and low costs due to high funding rates makes retrofitting of public transport buses a measure, which allows quick and cost-efficient reduction of NO<sub>2</sub> load.

## Act: Consultation on the fitness check of AQD

As part of the fitness check of the EU Ambient Air Quality Directives (2008/50/EC and 2004/107/EC) the EU Commission launched a public consultation on 8 May 2018. It will be open until 31 July 2018. All individuals and organizations are invited to contribute. The aim is to collect views from stakeholders on the level of awareness of air quality changes and to check whether the Directives have contributed to air quality improvement. You can contribute to this public consultation by filling out the online questionnaire via [EU survey](#). If you have any questions concerning the consultation do not hesitate to contact us. The fitness check is expected to evaluate the relevance, effectiveness, efficiency, coherence and the benefit of the current legislation and will be completed end of 2019.

## Revision of NEC Directive

The new National Emissions Ceilings (NEC) Directive sets 2030 emission reduction commitments for five main air pollutants. Member States must draw up National Air Pollution Control Programmes (NAPCP) that ensure the compliance with the reduction targets. The Programmes have to be submitted by April 2019. Unfortunately, it is still not clear which measures will be included in these Programmes or which existing legislation will be addressed. To increase the pressure on national governments, you should ask competent authorities in your country regularly about the development.

## Further aspects of DUH's work on Transport and Air Quality

### **Efforts at transparency and judgement on inspection of files**

In Germany and Europe, different from the US, manufacturers did not contribute to the compensation of the diesel gate by now. There is no legal way to address the companies as such comparable to the US and manufacturers did only confess to use defeat devices when convicted. Their explanation, defeat devices were essential to protect the engine from damage is still accepted by authorities in the majority of cases. DUH exploits all options to take legal action in this context as well. We started cases to withdraw the type approval from cars with illegal defeat devices and to challenge the Volkswagen recall. We also wanted to know more about meetings

and agreements between ministry and manufacturers and thus filed several requests based on access to information regulation. The court confirmed our standing and claims for transparency. However, the ministry filed an objection and we still have to wait. In another case, the court did not accept that the ministry did completely follow VW and blackened 600 pages of documents to protect “company secrets”. In this case, too, we still have to wait for full inspection. However, we will be able to disclose these agreements in the end.

### **Results of our hands-on campaign "Reveal where breathing makes you sick."**

Levels of NO<sub>2</sub> concentration currently exceed annual air quality limits (40 µg NO<sub>2</sub>/m<sup>3</sup>) by up to 100 % at every second official traffic-oriented station in Germany. Recent studies of independent research institutes show, that health damages already occur at levels of 20 µg NO<sub>2</sub>/m<sup>3</sup>. In January and again in April 2018, the DUH called for affected citizens to report places where they



expect a heavy pollution due to high traffic volume. In the first round, we evaluated almost 2000 proposals. Out of those, we chose 559 sites where affected citizens measured NO<sub>2</sub> from 1 February to 1 March. In the second round in June 2018, we considered about 570 different points. We chose the measuring sites according to the traffic volume of the suggested address, the surrounding buildings and sensitive institutions such as kindergartens or schools. We measured the concentration of NO<sub>2</sub> using diffuse samplers. These are small tubes with a chemical substance inside binding the measuring component. The results of the first round identify about 500 sites with levels above 20 µg NO<sub>2</sub>/m<sup>3</sup>. Further 69 points exceeded air quality limits of 40 µg NO<sub>2</sub>/m<sup>3</sup>. The results showed that even small cities and municipalities suffer from harmful air pollution. We published all results on our website: [www.duh.de/abgasalarm/](http://www.duh.de/abgasalarm/)

### **Important events on which we have participated**

DUH is participating in the working group on technical solutions and regulations organized by the Ministry of Transport and Digital Infrastructure. This group is one out of several initiated within the National Forum Diesel and discusses options to mitigate NO<sub>x</sub> emission from the existing diesel vehicles fleet.

On 17 April 2018 DUH organized a Capacity Building Workshop on European legal actions on air quality in Brussels. Nineteen representatives from thirteen environmental and consumer protection organization from different EU member states participated in the workshop. The

audience discussed to increase the cooperation with health experts and organizations, improving the arguments in legal cases. All NGOs feel that the public pressure is increasing and politicians are recognizing more and more the problem. There are a lot of different initiatives and legal cases planned, so the fruitful work will continue. News on lawsuits can be found on the [Right-to-Clean-Air Website](#).

## English Guidelines „Legal Actions for clean air“

DUH published an update of the guideline “Legal actions for clean air” that summarizes the legal cases currently being led by the DUH concerning non-compliance with air quality limits. In addition, the guideline was complemented by an overview of air pollution lawsuits in various European countries. The paper gives an overview of the air quality situation in Germany and Europe as well as the legal basis and is a first useful tool for NGOs who are also planning work or lawsuits in the field of air quality. The brochure is available at our project website for [download](#).

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

Air pollution is not the problem of some isolated hotspots. Recent data shows that we face a problem that covers entire cities, including smaller ones and suburbs. To raise awareness on this topic we produced a short clip. Have a look here: <https://www.youtube.com/watch?v=PtNzqJGOGhU>



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