

# Environmental Action Germany

## Legal Actions for Clean Air



## THE AIR WE BREATHE IS MAKING US ILL

Air pollution is still one of the greatest environmental problems of our time. Despite directives that apply throughout Europe and the Right to Clean Air, ascribing each EU citizen the right to ask for effective measures to reduce air pollution, the limits for harmful pollutants such as nitrogen dioxide ( $\text{NO}_2$ ) or particulate matter ( $\text{PM}_{10}$  and  $\text{PM}_{2.5}$ ) are regularly exceeded in many cities and agglomerations. This adversely affects the health of citizens and harms our environment and the climate.

In addition to these most widespread pollutants, there are also health-relevant limit values for the air pollutants sulphur dioxide ( $\text{SO}_2$ ), benzene, lead and carbon monoxide ( $\text{CO}$ ) which some European countries do not comply with. Although clean air is a basic human need, up to 95 % of the inhabitants of European cities are exposed to pollutant concentrations that are detrimental to their health. The main sources of this pollution are industry, transport and residential burning.

With the EU-funded project Right to Clean Air (LIFE15 GIE/DE/795 LEGAL ACTIONS), Environmental Action Germany (DUH) is working to significantly improve air quality in Europe, thereby protecting the environment and human health. Together with the Czech organisation Frank Bold Society (FBS), DUH is promoting measures to control and enhance air quality, and also supports legal action at European and national level, including lawsuits for clean air in selected German cities. Through public relations activities, capacity building workshops and the exchange of experience with numerous European partners, the problem is to be tackled throughout Europe.

## AIR QUALITY IN EUROPE

According to studies by the European Environment Agency (EEA)<sup>1</sup>, more than 428,000 people died prematurely from the consequences of particulate matter air pollution throughout Europe in 2014. The high  $\text{NO}_2$  emission levels are responsible for approximately 78,000 premature deaths. Poor air quality increases the risk of cardiovascular and respiratory diseases including cancer. These damages to human health are responsible for economic costs of between 330 and 940 billion euros, which is the equivalent of 3 to 9 % of GDP in the EU<sup>2</sup>.

More than one fifth of the EU urban population is exposed to air pollution which exceeds EU limit values. This is despite the fact that the European limit values are considerably less stringent than those recommended by the World Health Organisation (WHO). Approximately 82 % of the EU-28 urban population was exposed to concentrations exceeding the stricter WHO air quality limit values for  $\text{PM}_{2.5}$ .

## AIR QUALITY IN GERMANY

Besides particulate matter, nitrogen dioxide emissions in ambient air, is a key air pollution challenge in Germany. Permanent exposure to such air pollution damages the respiratory system and affects the cardiovascular system. Studies carried out by the WHO show that long-term exposure to air pollution – as it is found at sites close to traffic – is also associated with an increased susceptibility to disease and an increased mortality rate. According to the European Environment Agency (EEA) air quality report 2017, 12,860 people die prematurely due to exposure to  $\text{NO}_2$  and 66,080 due to particulate pollution in Germany [2014]<sup>3</sup>. The evaluation of the air quality monitoring stations in 2017 shows that the  $\text{NO}_2$  annual mean of 40  $\mu\text{g}/\text{m}^3$  nationwide is not met at 46 % of the monitoring stations located near to traffic<sup>4</sup>. The “front-runner” is the station at Stuttgart Am Neckartor. The annual mean  $\text{NO}_2$  value here was 73  $\mu\text{g}/\text{m}^3$  – almost twice the permissible limit value. The daily mean value of 50  $\mu\text{g}/\text{m}^3$  for particulate matter was exceeded on 47 days. Legally, no more than 35 days are permitted. According to the WHO, this limit value is still significantly too high because there is no particulate matter concentration below which no damaging effect can be expected. Therefore, they propose to limit the number of days with exceedance permission to three. The main cause of the high level of  $\text{NO}_2$  pollution in cities are diesel vehicle emissions, especially passenger cars with a share of 72.5 % in average<sup>5</sup>. The EU Commission – but also courts in Germany – affirm that measures such as a ban on diesel vehicles in urban areas can make a significant contribution to solving the problem.

## AIR QUALITY LIMIT VALUES

The European Union had developed an extensive body of legislation which established health based standards and objectives summarised in the table below. These apply over different periods of time because the observed health impacts associated with the various pollutants occur over different exposure times. Annual mean limits are aimed to protect us from long-term (chronic) exposure to air pollution while hourly and daily limits are aimed at protecting us from short-term (acute) exposure at episodes of high pollution that only last hours or days. Limit values are informed by guidelines set by the WHO. However, in the case of  $\text{PM}_{10}$  and  $\text{PM}_{2.5}$ , the limits are considerably less stringent than the WHO recommendations.

## EMISSION FROM WOOD AND COAL BURNING

About 65% of the total energy used by European households is required for heating. Residential burning is already the largest source of particulate matter, soot and benz[a]pyrene (BaP) in the EU. Stoves

1 EEA Report No. 13/2017 Air quality in Europa – 2017 report

2 Cost-benefit Analysis of Final Policy Scenarios for the EU Clean Air Package, March 2014

3 EEA Report No. 13/2017 Air quality in Europa – 2017 report

4 Umweltbundesamt Luftqualität 2017 – Preliminary Evaluation, January 2018

5 Umweltbundesamt HBEFA Version 3.3

EUROPEAN UNION AIR QUALITY STANDARDS				
Pollutant	Obligation	Time period	Compliance deadline	Permitted annual exceedences
Nitrogen dioxide ( $\text{NO}_2$ )	Hourly limit value of 200 $\mu\text{g}/\text{m}^3$	1 hour	01/01/2010	No more than 18
	Annual mean limit value of 40 $\mu\text{g}/\text{m}^3$	Calendar year	01/01/2010	n/a
Coarse particulate matter ( $\text{PM}_{10}$ )	Daily limit value of 50 $\mu\text{g}/\text{m}^3$	24 hours	01/01/2005	No more than 35
	Annual mean limit value of 40 $\mu\text{g}/\text{m}^3$	Calendar year	01/01/2005	n/a
Fine particle ( $\text{PM}_{2.5}$ )	Annual mean limit value of 25 $\mu\text{g}/\text{m}^3$	Calendar year	01/01/2015	n/a
Sulphur dioxide ( $\text{NO}_2$ )	Hourly limit value of 50 $\mu\text{g}/\text{m}^3$	1 hour	01/01/2005	24
	Daily limit value of 125 $\mu\text{g}/\text{m}^3$	24 hours	01/01/2005	3
Lead (Pb)	Annual mean limit value of 0.5 $\mu\text{g}/\text{m}^3$	Calendar year	01/01/2005	n/a
Carbon monoxide (CO)	Daily limit value of 10 mg/ $\text{m}^3$	Maximum daily 8 hour mean	01/01/2005	n/a
Benzene	Annual mean limit value of 5 $\mu\text{g}/\text{m}^3$	Calendar year	01/01/2010	n/a
Polycyclic Aromatic Hydrocarbons	Annual mean target value of 1 ng/ $\text{m}^3$ (expressed as conc. of Benzo[a]pyrene)	Calendar year	31/12/2012	n/a

and boilers are expected to account for more than 40% of particulate matter and almost 70% of soot emissions in Europe by 2030<sup>6</sup>. This is due, among other things, to the fact that solid biomass as a renewable source is considered to play a crucial role in the transition towards more climate-friendly heating sources in the EU. Thus, we have already seen a renaissance of wood as fuel.

But most of the more than 70 million solid fuel appliances in Europe are outdated. Especially small and manually operated appliances are often used improperly and wood is frequently burnt in a very inefficient way. Therefore, these small appliances contribute disproportionately to overall emissions. In addition, they often produce large amounts of soot particles that contribute to global warming. This worsens their climate footprint considerably.

Cities and regions should not only comply with the weak European air quality standards for PM, but tackle the problem in an committed fashion as part of their environment and climate protection strategy. They can restrict residential burning and should go beyond the EU standards, to protect the citizen's health effectively. A very strict example: In Krakow (Poland), there will be a permanent and comprehensive ban for solid fuel burning starting from September 2019.

<sup>6</sup> European Environmental Bureau, based on IIASA GAINS model, 2016

## VEHICLE EMISSION CONTROLS

The  $\text{NO}_2$  limits are persistently being exceeded in many cities primarily to the high average real driving nitrogen oxide ( $\text{NO}_x$ ) emissions from new diesel passenger cars. In fact, it has not only been known since the exhaust gas scandal that vehicles on the road have significantly higher  $\text{NO}_x$  emissions than measured in laboratory tests. This affects vehicles of all manufacturers.

Already since 2007, the DUH had evidence that there was something amiss about the manufacturers' official data on their cars, and has submitted this information to the authorities. Because politicians remained inactive despite clear evidence and even after the VW exhaust scandal became known in the USA, the DUH has started to measure emissions from passenger cars itself. Since March 2016, the DUH, together with her Emission Control Institute (ECI), has measured 90 passenger cars of exhaust gas standards Euro 6 and Euro 5 under real-life conditions on the road (as of April 2018). This includes vehicles with diesel, petrol and hybrid drives. Only a few of the vehicles tested so far comply with the limit value on the road, too. Measurements at predominantly summery temperatures showed, on average, lower emissions than in winter. This is also due to the fact that many vehicles have their lawful exhaust gas treatment system deactivated at temperatures below +19 degrees Celsius. The highest  $\text{NO}_x$  emissions of a car with the Euro 6 emissions standard have so far been recorded (as of April 2018) in a diesel Opel

Zafira Tourer 1.6 CDTi. This model emits an average of 1,474 mg NO<sub>x</sub>/km. The approval limit applicable on the test bench is 80 mg/km. Background information on our NO<sub>x</sub> and CO<sub>2</sub> measurements can be found on our website: [www.l.duh.de/pemsuk](http://www.l.duh.de/pemsuk)

**"We cannot avoid a technical retrofitting of the existing fleet of approximately ten million diesel passenger cars of the Euro 5 and 6 emission standards. None of the diesel cars we tested this winter met the NO<sub>x</sub> emission limit for road measurements."**

Jürgen Resch – CEO of Environmental Action Germany

With the aid of the measurements, the DUH wishes to draw attention to the fact that more and, above all, better controls of the exhaust gas cleaning system of vehicles are urgently required in order to ensure compliance with the applicable emission standards. Contrary to the German Federal Ministry of Transport, the DUH publishes its measurements, informs consumers and, with the extremely high NO<sub>x</sub> emissions, shows reason why almost half of the air quality monitoring stations located close to traffic exceed the limit values that have been valid since 2010. However, the measurements also indicate that it is possible to produce "clean" diesel cars, which meet the on-road limit values.

## AIR QUALITY PLANS AND EMISSION FACTORS

Current air quality plans along with numerous drafts for their updating are based on outdated and underestimated emission values contained in the Handbook on Emission Factors (HBEFA), Version 3.2. The Handbook was developed by the Environmental Agencies of six European countries and provides European-wide uniform and representative emission factors. In the updated Version 3.3, published in April 2017, the emission factors of all Euro 4, 5 and 6 diesel passenger cars have been increased. For Euro 4 and 5 vehicles, an increase of up to 35% is to be expected, depending on the traffic situation, and in the case of Euro 6 cars one can even expect the figure to double<sup>7</sup>. The forecasts regarding limit value compliance in the air quality plans must, therefore, be significantly revised and the requisite measures must be expanded correspondingly. Even with the old emission factors, compliance with the limit value is not expected in many areas before the year 2021 (as in Stuttgart) or 2030 (as in Munich), if no additional measures are implemented. After the forecasts have been updated, it will soon be apparent

<sup>7</sup> Umweltbundesamt HBEFA Version 3.3

that most plans will continue to provide the public with insufficient protection against the harmful effects of air-borne pollutants that lead to illnesses and premature deaths, and will thus infringe not only the EU Air Quality Directive (2008/50/EG) and its national implementation, but also Article 11 of the European Social Charter (right to protection of health) and most national constitutions.

**"We need a clear pledge from policymakers that they will fulfil their responsibility towards citizens and that the right to physical integrity as enshrined in the Basic Law is not trampled on any further. As long as the air pollution values are not met as quickly as possible, we will continue to sue."**

Jürgen Resch – CEO of Environmental Action Germany

## LEGAL BASIS

The basis for legal actions relating to clean air are the Council Directive 96/62/EC on ambient air quality assessment and management of 27 September 1996 and the Directive 2008/50/EC on ambient air quality



In many German cities, air monitoring stations show that air quality limits have been exceeded for years. To ensure health and well-being for local people, Environmental Action Germany is suing these 'dirty cities'.

and cleaner air for Europe, which came into force on 21 May 2008. The guidelines establish limit values for the pollutant concentration in ambient air. The defined limit values had to be anchored in national law, e.g. in Germany by the 39<sup>th</sup> Federal Emission Control Act. If air quality limits are exceeded, cities and municipalities are obliged to draw up action plans and/or air quality plans. These plans must ensure that the period of exceedance is as short as possible.

In order to protect the well-being of citizens, the environment and the climate, the Member States national governments and as the case may be their federal or regional governments must ensure rapid compliance with the limits by implementing effective measures. Where this is not the case, the DUH and partner organisations, such as the international NGO ClientEarth and the Frank Bold Society (FBS), use the national judicial system to remedy the shortcomings of the Member States and to legally enforce the right to clean air. As a result of the lack of provisions and measures or inadequate enforcement of these, limit values are still exceeded. For this reason, the DUH has supported test cases of affected citizens.

## LEGAL ACTIONS AND SUCCESSES

The action brought by a resident of a highly polluted road in Munich named Landshuter Allee and supported by DUH passed through all the instances until it reached the European Court of Justice (ECJ), which confirmed the legally enforceable right to clean air on 25 July 2008 (file number M 1 K 12.1046, Janecek case). With the ruling of the Federal Administrative Court (BVerwG) in Leipzig of 5 September 2013 (file number 4 K 165/12.WI [1]) regarding a legal action brought by the DUH against the state of Hesse on account of the exceedance of air quality limits in Darmstadt, the right of environmental associations to sue was significantly strengthened. Thanks to this ruling, environmental and consumer protection organisations that are entitled to prosecute can legally pursue compliance with air quality limits throughout the entire city. The Administrative Court of Wiesbaden (file number 4 K 757/11WI, 4 K 165/12.WI [1]), stated in its judgement of 30 June 2015 that financial or economic aspects are no valid excuse to refrain from taking measures to ensure that the limit values are observed. Air quality plans must, therefore, include all measures that are appropriate to comply with the limit values as soon as possible.

## LEGALITY OF DIESEL DRIVING BANS CONFIRMED

On 13 September 2016, the Administrative Court of Düsseldorf ruled that driving bans on certain diesel vehicles were legally possible in order to comply with the limit values as quickly as possible. The Administrative Court of Stuttgart went one step further with its decision of 26 July 2017 and ordered the state of Baden-Württemberg to consider a year-round ban on diesel-powered vehicles. In a judgement in principle, the Federal Administrative Court of Leipzig declared on 27 February 2018 that diesel traffic bans are possible already today, while respecting the principle of commensurability.

## LEGAL ACTIONS ON CLEAN AIR

In cooperation and with support of the international NGO ClientEarth, the DUH brought action against several regional authorities in November 2015 for exceeding air quality limits for NO<sub>2</sub>. The cities concerned are Stuttgart, Frankfurt, Düsseldorf, Essen, Gelsenkirchen, Aachen, Cologne and Bonn. Citizens in these towns have been exposed to high levels of air pollution for years. In June 2016, the DUH also took legal action in this area because of the exceedance of NO<sub>2</sub> limits at all air quality monitoring stations situated close to traffic in Berlin. In October 2016, the DUH resumed the proceedings against the state capital of Mainz because the NO<sub>2</sub> limits were being persistently exceeded. In November 2017, DUH started legal actions in three further cities and in April 2018 in eleven further cities due NO<sub>2</sub> pollution. All in all DUH is now suing in 28 cities in nine out of 16 federal states.

In addition, the DUH initiated enforcement measures in Munich, Darmstadt, Reutlingen, Wiesbaden and Limburg. In some of these cities, there have, in recent years, been legally binding judgements requiring the competent authorities to update existing air quality plans and to introduce measures to ensure compliance with the NO<sub>2</sub> limits as soon as possible. Despite these court decisions, so far no measures have been taken to ensure compliance with the limit values in a timely manner. For this reason, the DUH is calling on cities with excessive air pollution to draw up effective air quality plans and continues to file complaints for clean air.



Environmental Action Germany is conducting legal actions to enforce Clean Air in these 28 German cities.



The fastest way to comply with the air quality limits is to ban diesel vehicles in the concerned cities.

## LEGAL ACTIONS IN OTHER COUNTRIES

On 19 December 2012, the European Court of Justice ruled in relation to air quality plans that even in case of drastic economic consequences, measures can be demanded of Member States if they are necessary to take account of the limit values. The Italian government tried to justify the continuing breach of the PM<sub>10</sub> limit value in many Italian regions by stating that the objective of compliance could not be achieved. This would have required "drastic measures at economic and social level" and a "violation of fundamental rights and freedoms". In this argumentation, the ECJ did not recognise any justification for exceeding the limit values and stressed that the Member States must comply with the deadlines.

In other Member States, environmental associations are also compelled to legally enforce compliance with air quality standards. In 2011, for example, ClientEarth filed a lawsuit against the United Kingdom for non-compliance with NO<sub>2</sub> limits in 16 British cities and regions. With its judgement of 19 November 2014, the European Court of Justice ruled [C-404/13] that national courts are obliged to take any necessary measure against the responsible authorities when air quality limits are exceeded. The UK Supreme Court ruled that the UK government must submit new and effective air quality plans by 31 December 2015. However, this proved to be less effective and did not provide for a limit value before 2025, whereupon ClientEarth filed a complaint again.

On 2 November 2016, the UK Supreme Court reiterated that these air quality plans were insufficient and needed to be revised. After the British government attempted to postpone the publication of new air quality plans until after the election, the Supreme Court ruled that the plans had to be submitted and agreed by 31 July 2017 at the latest. Because

the plans for more than 45 communities in England and Wales are still insufficient to meet air quality limits, ClientEarth has again filed a complaint. During the negotiation in January 2018, the government of Wales announced to adopt air quality plans until 31 July 2018. On 21 February 2018, the court called on the British government to draw up air quality plans to comply with the limit values in the affected areas as soon as possible.

## INFRINGEMENT PROCEEDINGS

Besides the proceedings of affected citizens and NGOs, the EU Commission also enforces applicable law by legal proceedings. The Commission initiates infringement proceedings against Member States based on two fundamental legal principles:

- Infringement of the obligation to comply with the air quality limit values in the specified period [Article 13]
- Infringement of the obligation to draft air quality plans that include appropriate measures so that the period of non-compliance can be kept as short as possible [Article 23]

After a first written warning and a final written warning the European Commission can refer the case to the European Court of Justice. On account of excessive particulate matter pollution alone, 16 Member States have already received warning letters. The Commission has brought an action before the ECJ against two Member States: Bulgaria and Poland. On 5 April 2017, it condemned the Bulgarian government for the "systematic and prolonged exceedance" of the particulate matter limit values. On 22 February 2018, it condemned the Polish government

## 8-POINT EMERGENCY PROGRAMME FOR CLEAN AIR IN GERMANY

- 1. Binding commitment by car companies** to sell, only new diesel cars that comply with the Euro 6 limit value for NO<sub>x</sub> of 80 mg/km on the road (according to RDE emissions measurement at temperatures of minus 15 degrees Celsius),
- 2. Strengthening of the supply of clean and efficient drive technologies** for new vehicles in 2018 (natural gas, efficient hybrid and electric drives).
- 3. Compulsory recall** of all Euro 5 + 6 diesel vehicles for hardware retrofitting with urea-powered SCR exhaust gas purification system. Ensuring compliance with the Euro 6 limit value for NO<sub>x</sub> of 80 mg/km on the road (RDE) to -15 degrees Celsius. If manufacturer refuses to carry out the technical retrofitting, then the dirty diesel car will be bought back.
- 4. Retrofitting programme for all Euro 5/V + 6/VI light commercial vehicles** (vehicles of delivery people and tradepeople) to current Euro 6/VI SCR technology.
- 5. A special infrastructure program for “clean public transport”:** commitment and improvement of municipalities to ensure that all public transport buses have SCR catalytic converters and particulate filters by 1 July 2018 at the latest and that they comply with Euro 6 emission values or are replaced by new vehicles with natural gas or electric drives. Expansion of the range of local transport services, such as the expansion of routes, more frequent services and the extension of operating times.
- 6. Introduction of class action lawsuits in German law** to give consumers improved rights against fraudulent companies.
- 7. Industrial transparency commitment:** obligation to publish the RDE measurements of all vehicle models for CO<sub>2</sub> and NO<sub>x</sub> (for the temperature range of minus 15 degrees Celsius to plus 35 degrees Celsius) and the vehicle-specific temperature range with software-controlled, lawful exhaust gas purification system.
- 8. Transparency of the authorities:** disclosure of all CO<sub>2</sub>- and emissions-related data by the Federal Motor Transport Authority: the automotive industry expressly agrees to publish all the vehicle data required to verify CO<sub>2</sub> and exhaust gas values, as well as the illegal and the legally declared shutdown devices.

As a matter of course, these demands are transferable to other countries.

for failing to implement air pollution control measures. Both Member States are now required to submit new air quality plans to ensure compliance with the applicable limit values. Otherwise, the countries will face new proceedings initiated by the EU Commission, which might result in very high penalty fees.

On 17 May 2018, the European Commission brought an action before the ECJ against six EU Member States (Germany, France, Hungary, Italy, Romania and the United Kingdom) for continuing violations of EU air quality legislation. The Commission is additionally sending letters of formal notice to Germany, Italy, Luxembourg and the United Kingdom for failure to comply with EU vehicle type-approval rules. In the event of a conviction, Germany is threatened with fines in the billions.

## MEASURES TO IMPROVE AIR QUALITY

In 2013, the Federal Environment Agency has compiled a list of the German air quality plans and recorded more than 100 measures that are suitable for reducing PM<sub>10</sub> and NO<sub>2</sub> concentrations<sup>8</sup>. The DUH carried out an analysis of the current situation and, on 31 July 2017, published the “8-Point Emergency Programme for Clean Air”, with which both the air quality limits can be complied with and the mobility of people can be ensured.

## DRIVING RESTRICTIONS

The key measure for the fastest possible compliance with the air quality limit values is a driving ban for diesel vehicles in all affected cities. With more than 70 %, diesel cars are the largest contributor to NO<sub>x</sub> emissions in urban traffic. Modern Euro 6 diesel cars emit 30 times more NO<sub>x</sub> in real driving conditions than modern Euro 6 petrol cars. Therefore, driving restrictions must apply to all diesel vehicles that do not meet the Euro 6 limit on the road. In the DUH's view, only vehicles that verifiably meet the limit values in real-driving operation on the road all year round are to be allowed to enter city centres. According to the DUH, the German Federal Environment Agency and the Administrative Court of Stuttgart (13 K 5412/15), carrying out mere software changes in Euro 5 + 6 diesel vehicles, as decided by policymakers and the car industry at the National Diesel Forum on 2 August 2017, is unsuitable for ensuring a sufficient reduction with respect to the NO<sub>2</sub> air pollution in our cities. It is technically possible to replace the exhaust gas purification system and thus make the Euro 5 + 6 diesel vehicles clean so that these vehicles could safely enter inner cities. The cost for this hardware solution amounts to approximately €1,400 to €3,300, which, according to the DUH, would have to be paid fully by the manufacturer. According to the decision of the Federal Administrative Court, driving bans on Euro 5 vehicles will be possible from September 2019. Vehicles of Euro 4 and older can therefore be excluded from the highly loaded areas by driving bans even earlier.

<sup>8</sup> Umweltbundesamt Inventory and effectiveness of measures to improve air quality May 2015 – [www.umweltbundesamt.de/publikationen/inventory-effectiveness-of-measures-to-improve-air](http://www.umweltbundesamt.de/publikationen/inventory-effectiveness-of-measures-to-improve-air)

## CLEAN AIR CASES IN THE EU

### **Germany**

It started in 2005 with the Janecek case. Since then there have been 28 cases brought to court by Deutsche Umwelthilfe, thirteen with support from ClientEarth. Most recently the Federal Administrative Court ruled that health protection takes precedence over economic interest and thus cleared the way for diesel bans.

### **The Netherlands**

Following a court ruling from September 2017 by the Court of The Hague, the Netherlands must take immediate action against air pollution. The environmental protection organisation Milieudefensie achieved this success. The state was sentenced to concrete measures to comply with all European limit values in a “foreseeable and demonstrable” manner.

### **UK**

In February 2018 ClientEarth won for the third time against UK government. The High Court ruled that the court should have effective oversight of the UK government’s next air quality plans. It means, for the first time ever, that ClientEarth will be able to immediately bring the government back to court if it prepares an air quality plan which is unlawful.

### **France**

After several setbacks, Les Amis de la Terre with support of ClientEarth brought a new case against the French government. In its judgment of 11 July 2017 (N° 394254), the Conseil d’État departed sharply from its previous decisions, stated that the air quality directive sets an obligation of results and ordered the adoption of new and more effective air quality plans by 31 March 2018.

### **Italy**

In the European Commission’s case against Italy, the ECJ ruled on 19 December 2012 that even drastic economic measures required to comply with air quality limit values can be demanded of Member States if they are necessary to take account of the limit values.





### **Sweden**

In 2008 the Swedish Society for Nature Conservation (SSNC) brought a case against the city of Stockholm for failing to take measures included in its air quality plan. Despite a 2012 court ruling in SSNC's favour, the lack of any effective remedy has allowed the city to continue to delay taking action.

### **Poland**

In Poland, residents, supported by the Frank Bold Society, are currently claiming their right to challenge air quality plans at the Constitutional Court. Although the ruling is not expected until the end of 2018, the increased pressure on the authorities has already led to considerably improved air quality plans.

### **Czech Republic**

Two citizens, a local NGO and the Frank Bold Society filed an administrative complaint against the air quality management plan in Ostrava in 2016. In December 2017, the Supreme Administrative Court rejected the air quality plan as not being appropriate. The ruling is likely to be followed in the other three cases of complaints against air quality plans.

### **Austria**

One of a number of lawsuits in Austria went to the Higher Administrative Court whose decision in October 2017 gave citizens a sound legal basis to demand measures to protect them from health hazards arising from air pollutants. The higher administrative court with jurisdiction, ruled on 19 February 2018 that based on Aarhus Convention environmental NGOs can order a review of compliance with the legal provisions arising from EU environmental law.

### **Hungary**

Local residents of road no. 86 in western part of Hungary sued the road operator and maintenance company in 2007 for failing to implement measures to prevent heavy duty road traffic causing health and property damages. This test case was successful and the verdict was affirmed by the Hungarian Supreme Court.

FURTHER CLEAN AIR MEASURES	
Responsibility of the national government	Responsibility of the municipalities and federal states
<b>Traffic measures</b>	
<ul style="list-style-type: none"> <li>➤ Ending of the diesel fuel subsidy by adjusting the energy tax rates of all fuels according to carbon content. All EU Member States except Hungary and the United Kingdom have higher tax rates on petrol than on diesel.</li> <li>➤ Further development of the environmental regulations and the introduction of a blue sticker to identify vehicles that meet the NOx limit value of the Euro 6 standard diesel in real-driving operation.</li> <li>➤ Retrofitting programme for all Euro 5 + 6 passenger cars and light commercial vehicles (suppliers and tradespeople) to current Euro 6 SCR technology at the manufacturer's expense.</li> <li>➤ Introduction of a special investment programme for expansion and 100% electric rail transport by 2030.</li> <li>➤ A special retrofitting programme for „clean public transport“: obligation and improved funding of municipalities to ensure that all public transport buses have SCR catalytic converters and particulate filters by the end of 2018 at the latest and that they comply with Euro VI emissions values or are replaced by new Euro VI vehicles with effective exhaust gas purification or by vehicles with natural gas or electric drives.</li> <li>➤ More capacities and effective structures for market monitoring with emission measurements of vehicles in actual operation.</li> </ul>	<ul style="list-style-type: none"> <li>➤ Driving bans for diesel vehicles.</li> <li>➤ Retrofitting of all local transport buses with Particulate and NOx reduction systems (SCRT) that work in real operation.</li> <li>➤ No exception permits for buses with no effective exhaust gas cleaning systems in environmental zones.</li> <li>➤ Changeover of the taxi fleet to environmental taxis with gas, hybrid or electric drives.</li> <li>➤ Conversion of the urban fleet to low-emission vehicles.</li> <li>➤ Introduction of a citizens' ticket to increase demand for public transport.</li> <li>➤ Introduction of a city toll to limit motorised private transport (Graduation according to emissivity).</li> <li>➤ Speed limit of 30 km/h on very busy roads while maintaining or improving traffic flow.</li> <li>➤ Amendment of the tender criteria for the obligatory use of construction machines and diesel locomotives with particulate filters in cities.</li> <li>➤ Reduction in the number of parking spaces, in conjunction with an expansion of Park&amp;Ride places.</li> <li>➤ Installation of „gatekeeping traffic lights“ to regulate traffic on very busy roads.</li> <li>➤ Development of a comprehensive network of cycle paths throughout the entire town.</li> </ul>
<b>Wood and coal burning measures</b>	
<ul style="list-style-type: none"> <li>➤ Push for stricter emission limit values and a more realistic measurement procedure in the course of type approval of stoves and boilers in Europe.</li> <li>➤ Requirements and economic incentives for energy renovation and insulation of existing buildings have to be extended. The same holds true for funding programmes for solar heat, geothermal energy and biomass appliances, provided that they show a comparable low level of particulate matter like other heat sources (mandatory use of emission reduction technology).</li> <li>➤ National legislation has to make sure that municipalities and regions can take measures that go beyond European requirements for air quality (see stricter local requirements for residential burning).</li> <li>➤ Promotion of ambitious eco-labeling for stoves and boilers as well as standardisation of fuels.</li> </ul>	<ul style="list-style-type: none"> <li>➤ Awareness-raising and burn-right campaigns to inform citizens.</li> <li>➤ Stricter local requirements for residential burning and promotion of low-emission technology (e.g. better building efficiency, shutdown of old appliances and use of particle separators).</li> <li>➤ Local authorities must enforce right to clean air with effective controls and sanctions (e.g. ash test in case of illegal burning).</li> </ul>

## FURTHER CLEAN AIR MEASURES

The table above gives an overview of measures that are suitable for further reducing the concentration of pollutants in the air. The list focuses on measures in the transport sector, but also identifies important issues in the field of domestic combustion. The mentioned mea-

sures are in line with the claims of the German Federal Environment Agency<sup>9</sup>.

<sup>9</sup> Umweltbundesamt Inventory and effectiveness of measures to improve air quality May 2015 – [www.umweltbundesamt.de/publikationen/inventory-effectiveness-of-measures-to-improve-air-quality](http://www.umweltbundesamt.de/publikationen/inventory-effectiveness-of-measures-to-improve-air-quality)



## ENVIRONMENTAL ACTION GERMANY FIGHTS FOR YOUR RIGHT TO CLEAN AIR

Since many years the Environmental Action Germany has supported affected residents and environmental protection organisations in various Member States when suing for their right to clean air. Currently we are working together with environmental organisations in the Czech Republic and Portugal, which have initiated legal proceedings for exceeding air quality limits, in order to achieve better implementation of effective measures.

If you are suffering from traffic-related air pollution and want to move your city to take action, feel free to contact us. Further information on the legal possibilities for improved implementation of the European air pollution policy can be found on our website.

› [www.right-to-clean-air.eu](http://www.right-to-clean-air.eu)

### Join us!

Protecting nature, health and consumers is vital and urgent. Therefore, Environmental Action Germany (Deutsche Umwelthilfe – DUH) fights for:

- Clean Air and Climate Protection
- Intact Ecosystems, Biodiversity and Wilderness
- Waste Reduction and Recycling
- Affordable Energy and Mobility Transition
- Responsible Consumption and Eco-friendly Products
- Environmental Justice and “Green” Cities
- Enforcement of Consumer Rights
- Healthy and Ecological Lifestyle

**All in all: A better life – now and for the future generations.**

Please support us – with your donation or as a sustaining member.

Become a  
sustaining member!

[www.duh.de/  
englisch/support-us](http://www.duh.de/englisch/support-us)

Thank you ❤

 Deutsche Umwelthilfe





## ABOUT THE PROJECT

Air pollution is still one of the greatest challenges of our time.

Despite directives throughout Europe, air pollution limits are regularly exceeded in many cities and agglomerations. This burdens the health of the citizens and harms our environment and the climate. With the project Right to Clean Air, we are endeavoring to significantly improve air quality in Europe. The Environmental Action Germany (DUH) and the Frank Bold Society (FBS) jointly promote air pollution control measures in different source areas and support legal action at European and national level. The project is funded under the LIFE program by the EU Commission.

A project by



The Environmental Action Germany (DUH) is a non-profit consumer protection association entitled to sue, that is working for a careful handling of natural resources, biodiversity and landscape since 1975.



The non-governmental organization Frank Bold Society (FBS) was founded in the Czech Republic in 1995 and provide legal aid in environmental complaints.

Co-financed by



The European Union's LIFE Program is a funding instrument that supports environmental and climate protection projects.

*Credit:* Stefan Germer/Fotolia (title), spuno/Fotolia (p.4), Pixabay (p.6), Markus Bachmann (p.11)

As of 2018-06-15



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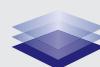
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We are recognised as a non-profit environmental and consumer protection organisation. Politically independent and entitled to bring legal action we have been campaigning to preserve the natural foundations of life for more than 40 years. Please help us with your donation! [www.duh.de/englisch/support-us](http://www.duh.de/englisch/support-us)

We are transparent according to the Transparent Civil Society initiative and have been awarded the DZI Seal-of-Approval as a sign of trustworthy organisations.



Initiative  
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