

Ambient Air Quality

Case of Ostrava-Karvina Agglomeration, Czech Republic

The European Commission is taking action over harmful levels of air pollution in EU member states. It has started infringement procedures against France, Italy, Spain and Slovenia for exceeding EU limits on ambient concentrations of sulfur dioxide (SO₂), an air pollutant from industrial installations that can cause respiratory problems and aggravate cardiovascular disease. The Commission is also asking 23 member states to provide information on the measures they are taking to reduce the levels of airborne particles known as PM₁₀ to meet EU standards. These coarse particles emitted by industry and traffic can cause asthma, cardiovascular problems, lung cancer and premature death. Some 70% of European towns and cities with 250,000 inhabitants or more have reported exceeding the PM₁₀ limits in at least part of their area. EU limit values for sulfur dioxide, PM₁₀ and several other pollutants were agreed in a 1999 directive, which was replaced by **Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe.**

Binding daily and annual limit values for PM₁₀ have been in force since 1 January 2005.¹ According to the Directive, the territory of the Czech Republic was divided into 10 zones and agglomerations. In Ostrava-Karvina agglomeration, the measurements proved the limit values regarding to PM₁₀ are exceeded (especially during smog situations) and the quality of ambient air in many parts of the City of Ostrava is very bad.

In previous years, 24 hour limit value for PM₁₀ was exceeded 118 - 67 times a year, depending on the site of measurements. The average annual concentration of PM₁₀ fluctuated between 47- 49 micrograms/m³.

The Air Quality Plan (according to Art. 23) is in place since 2007 in the Czech Republic. The short term action plan (Art. 24) was elaborated by the Municipal Authority for Ostrava Agglomeration in 2012.

Main causes of air pollution by PM₁₀ can be seen as:

- a) industrial sources of pollution (Arcelor Mittal, Vítkovice Machinery Group, central heating systems etc.)
- b) car transportation
- c) local heating systems
- d) transboundary air pollution (mainly from Poland).

Study

- Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (Art. 13 and 23.1)

¹ EU law (Directive 2008/50/EC) requirements related to PM₁₀ particulates in EU Member States: 24-hour limit value for PM₁₀ = 50 micrograms/m³, not to be exceeded more than 35 times a year. Annual limit value = 40 ug/m³.

- Case CJ EU Dieter Janecek v. Freistaat Bayern (C- 237/07)
- Case C – 404/13: Judgment of the Court of 19 November 2014

Questions:

1. Does the Czech Republic comply with EU legislation regarding to concentration of PM₁₀ particulates in ambient air?
2. Was there the possibility for the European Commission to open infringement procedure against the Czech Republic? Based on what grounds?
3. Do you know any other Member State against which Commission opened infringement procedure regarding to non compliance with the Directive? What steps had been taken in that infringement procedure? (Via Eur-lex)
4. Can you find some EU court decisions regarding air pollution? (Via Eur-lex)

A Major Win for Air Quality in the Most Pollution Afflicted Region of the Czech Republic

21. 12. 2017

Czech Supreme Administrative Court ruled yesterday in favour of air quality and protection of human health. In the case local citizens and an NGO from Ostrava agglomeration, the most polluted region in the Czech Republic, succeeded with their claim for better air quality. They asserted that the Air Quality Management Plan for the agglomeration is not effective enough and will not lead to a swift achievement of the binding air quality standards. Yesterday's decision is likely to influence similar cases to come and already pending (Praha, Brno, Usti n. L. region).

The court quashed part of the Air Quality Management Plan, because the judges found the plan insufficient and not fully in compliance with the EU Ambient Air Quality D. The court also quashed a previous decision of the Municipal Court in Prague, which ruled in favour of Ministry of the Environment. The Ministry will now have to prepare a new Air Quality Management Plan for the agglomeration. Expert legal support for the lawsuit, which started in 2016, was provided by Frank Bold.

"The court ruled that the plan does not fulfill all requirements foreseen by the Ambient Air Quality D. What is missing is the timeframe for implementation of the proposed measures, which would assure that the plan meets its goals in a given time. The plan should also contain means to evaluate the measures and quantify their contribution to the air quality improvement," says **Petra Marie Giňová**, lawyer at Frank Bold. *"All this*

was requested in strategic environmental assessment (SEA), but the request went unheard," she adds.

The Supreme Administrative Court ruled as the court of second instance, its decision is final and in force. It cannot be challenged by any judicial remedy.

*"It is a critical ruling, since the court specifies what exactly the air quality management plans must contain in order to have a real and meaningful impact as well as to comply with the air quality EU legislation," says **Petra Marie Giňová**.*

"The court ruled that the plan must contain efficient measures. In order to be efficient they have to aim at the industry, which is the major source of pollution in Ostrava region," says the claimant, Vladimír Burda.

Background:

Ostrava is the most polluted city in the Czech Republic. In its agglomeration the air quality limit values set by European law for NO₂, PM₁₀ particles and target limit value for benzo(a)pyren are breached on a long term basis. The level of pollution in Ostrava takes off two years of life expectancy. Air pollution has adverse effects on human health and causes premature deaths as well as diseases of the cardiovascular, pulmonary and central nervous system. According to the WHO, every year air pollution in the European Union costs more than 1,35 trillion EUR and causes 467 000 premature deaths.

The European Directive 2008/50/EC on ambient air quality and cleaner air for Europe, as well as Czech Air Quality Act, require that the Air Quality Management Plans reassure the achievement of the legal air pollution limits "in the shortest time possible". The quashed Air Quality Management Plan for the Ostrava agglomeration did not provide effective measures to fulfil this requirement. The Ministry of the Environment thus did not meet its obligations set by the directive and the law. Therefore the Supreme Administrative Court quashed the plan and the Ministry will now have to start the preparation of a new Air Quality Management Plan for the area.

Frank Bold has provided legal expertise for three similar lawsuits where local citizens and NGOs challenged Air Quality Management Plans in other highly polluted regions – Brno and Prague agglomerations and Ústecký region – for analogous reasons. These cases are currently pending before the courts. Today's decision constitutes a positive precedent for these three cases, therefore we can expect another three favourable rulings in the close future.

Available at <http://en.frankbold.org/news/a-major-win-air-quality-most-pollution-afflicted-region-czech-republic> (20.3.2020)