

# \* SIGNIFICANCE OF AIR QUALITY PLANS in EU MS

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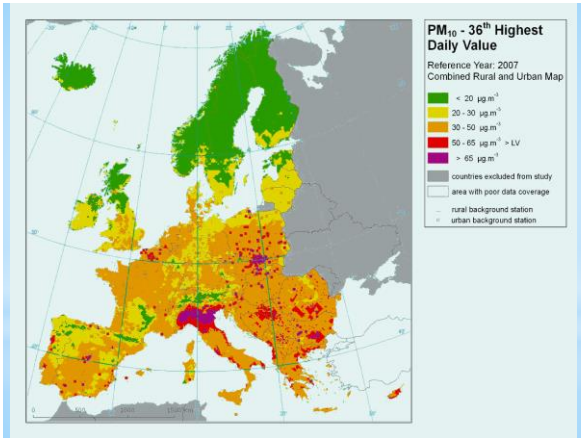
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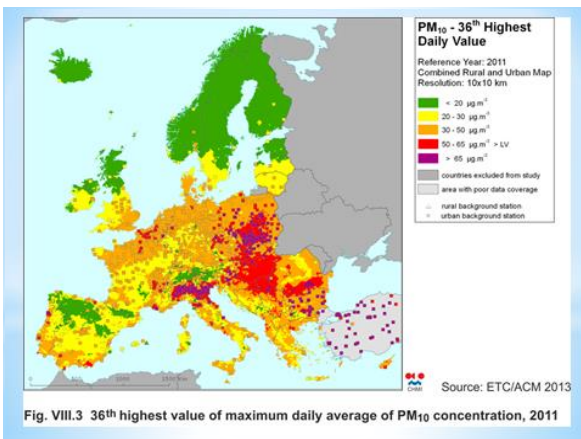


Fig. VIII.3 36<sup>th</sup> highest value of maximum daily average of PM<sub>10</sub> concentration, 2011

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- A/ Regulation of sources of pollution → ELV
- B/ Regulation of air quality → AQLV



**\* EU LEGISLATIVE APPROACH TO AIR POLLUTION**

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\* Directive 2001/81/EC on national emission ceilings for certain atmospheric pollutants repealed by Directive 2016/2284/EU on the reduction of national emissions of certain atmospheric pollutants



\* Directive 2008/50/EC on ambient air quality and cleaner air for Europe

\* Directive 2004/107/EC relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air

**\* Emissions reduction programmes**  
**Air quality plans**  
**Short term action plans**

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**Member States are obligated:**

- \* to establish zones and agglomerations in their territory
- \* to ensure a **good quality of the ambient air** (e.g. not to exceed limit values) throughout all zones and agglomerations
- \* to establish **air quality plans** for zones and agglomerations where the levels of pollutants in ambient air exceed the limit value plus relevant margin of tolerance (AQPs)



**\* Art. 13 and 23.1 Directive 2008/50**

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- \* Air quality plans are regarded to SO2, NO2, benzene, carbon monoxide, lead, PM10, (limit values) and PM2,5 (target value).
- \* Consistency with other plans must be ensured.
- \* Information to be included in AQPs are delimited in section A of the **Annex XV** of the Directive.
- \* Air quality plans must set out **appropriate measures**, so that the **exceedance period can be kept as short as possible**.

## \* Requirements on content of AQP

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- \* How to implement the Art. 23.1?
- \* What measures are „appropriate“ ?
- \* What time period is “as short as possible”?
- \* What are the criteria to assess planned measures?
- \* What is the relation of AQPs to other regulatory instruments?
- \* What is the relation of Art. 23.1 to Art. 13.1?



- \* C- 28/09 Commission v. Austria
- \* C- 488/15 Commission v. Bulgaria

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## \* Development Projects in Prague

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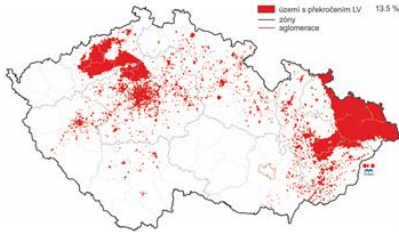
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## OBLASTI SE ZHORŠENOU KVALITOU OVZDUŠÍ 2014



Obr. VII.1 Vyznačení oblastí s překročenými emisními limity pro ochranu zdraví bez zahrnutí přízemního ozonu, 2014

Zdroj: MŽP

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### \* AIR QUALITY PLAN (Prague Agglomeration)



\* Measures to reduce the impact of the traffic on the air quality → **discrepancy with projected activity**

**\* Is it possible to permit a new building with a large parking lot?**

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\* Air Protection Authorities (APAs) **are bound** by the **limit values** for the concentration of main pollutants (SO<sub>2</sub>, NO<sub>x</sub>, CO, benzene, PM<sub>10</sub>, PM<sub>2,5</sub> and lead) in the ambient air in their decision-making.

\* APAs are entitled to depart from this rule only if adequate **compensatory measures** are proposed in the project.

\* APAs must not permit the operation of the source of pollution prior to realization of projected compensatory measures.

**\* DECIDING ON THE PROJECT IN CZECHIA**

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- \*Regional emission ceilings must be incorporated into the AQPs; APAs have to **respect emission ceilings** set for the given region/agglomeration in their decision-making.
- \*APAs are entitled to set **conditions** in the permit to carry out the activity.
- \*Air Protection Authorities (APAs) are obligated to **come out of Air Quality Plans (AQPs) and of concentrations of polluting substances in ambient air**

## \* DECIDING ON THE PROJECT IN CZECHIA

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- \*APAs are bound by the AQ limit values
  - \*To „come out of AQP“  AQP measures are binding
  - \*The building with the parking lot may be permitted on condition that compensatory measures will be carried out to minimize the pollution.
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- \*no increments to existing pollution,
  - \*reduction of pollution - gradual (AQP are taken into account) - consideration of other interests.

## \* DECIDING ON THE PROJECT IN CZECHIA

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- \*In exercising discretion the Member States should, in addition to the aim of minimizing the exceedance, also take into account the **balance which must be maintained between that objective and the various opposing public and private interests** (C-237/07 (46))
- \*The air quality plans under Article 23(1) of Directive 2008/50 can also be adopted only on the basis of a **balance of interests**. (Commission v. Bulgaria, Juliane Kokott, 2016)

## \* AIR QUALITY PLANS REQUIREMENTS

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The Municipal Court in Prague, Case 11A 84/2016:

- \*2 NGOs and Mr. B. took the MOE of the CR to the Court
- \*AQP for Ostrava-Karviná agglomeration does not include air pollution reduction measures capable to achieve EU AQLV so that the exceedance period can be kept as short as possible.



- \*declared that AQP is a conception document which was subject to SEA,
- \*denied to review expert findings,
- \*dismissed the case.

## \*Challenging the quality of AQP by the public

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- \*The AQP must demonstrate **how** conformity with the limit values will be achieved.
- \***The duty not to exceed limit values is based on Art. 13.1.**
- \*To verify the effectiveness of AQPs, Commission **relies on air monitoring data**
- \***AQPs are part of the whole system of legal tools;** their significance should not be exaggerated!
- \*The interpretation of Art. 23.1 is difficult.

## \*CONCLUSION and aftermath

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- \*The latest Amendment to the Air Protection Act granted APAs the right to enter private homes to check small stationary sources of pollution.
- \*This was considered as **the breach of constitutional right** ensuring „untouchable inhabitation“ by many.
- \*Constitutional Court denied the proposal for derogation of that part of the Air Protection Act in July 2017

## \*Aftermath ....

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