

Avosetta Questionnaire: Air Quality Law

London 24 - 25 May 2019

Most of the questions below relate to implementation of the EU Ambient Air Quality Directive (Directive 2008/50/EC [2008] OJ L152/1, 'AQD'), looking beyond direct transposition to actual implementation and the legal and structural challenges in meeting EU air quality standards. Some questions extend beyond the AQD to examine other controversial or emerging aspects of EU law relating to air quality.

Please spend more time answering questions that are particularly relevant to the experience in your Member State.

Please answer these questions in maximum 8 pages (not including the questions), which may require being succinct with some answers. We can flesh out any points further in our discussion when we meet in London.

Please return your answers to Eloise Scotford (eloise.scotford@ucl.ac.uk), along with your short report on national environmental law developments over the last year, by **1 May 2019** in time for preliminary analysis and advance circulation to other attendees.

Air Quality: National Context

1. What are the main sources of unlawful levels of air pollution in your Member State?
2. How extensive is reported non-compliance with AQD air quality standards in your Member State?
*For AQD air quality standards, please refer to AQD, Articles 12-19.
Please refer to data either reported to the Commission or otherwise available in your Member State. It may be easiest to set this information out in a table for different standards for certain pollutants (NO₂, PM₁₀, PM_{2.5}, SO₂ are likely to be the main pollutants for which there may be reported non-compliance with AQD standards).*
 - a. If data on compliance with air quality standards is incomplete, please indicate the extent of the non-compliance with requirements of Article 26 AQD (public information requirements).
3. Have EU infringement proceedings been brought against your Member State for failure to comply with the AQD?
 - a. If so, what was the outcome of this enforcement action and its impact on air quality law and policy in your Member State? (If enforcement action is ongoing, answer this question as best you can in terms of the effects of this action on your Member State's approach to air quality law and policy.)

Air Quality Standards

4. Was there pre-existing national law relating to air quality standards (similar to the AQD), or did the AQD introduce something new in your country?
5. How are AQD air quality standards implemented in law in your Member State?
6. Does any law in your Member State provide for air quality standards that go beyond those set out in the AQD, imposing any more stringent standards, for example, in relation to PM_{2.5}?

Air Quality Monitoring and Modelling

7. How are air quality monitoring networks set up in your Member State (briefly)? Do these go beyond the monitoring requirements set out in Chapter II AQD (eg in terms of the number and location of monitoring stations)?
8. What sort of problems are encountered in monitoring of air quality in your Member State?
Problems might include: inconsistent results given by different schemes for monitoring air quality, improper siting of measurement equipment, unreliable equipment used, no monitoring established in key areas, unconfirmed results etc.
9. As far as you can determine, are there limitations or problems with the modelling techniques used in your Member State to assess air quality (where modelling is permitted as a method for assessment under Chapter II AQD)?

National Air Quality Plans and Governance

10. Does your Member State have a national Air Quality Plan under Article 23?
 - a. If so, to which pollutants does the plan relate (eg NO₂ or PM₁₀) and what **key** measures does the plan outline to keep exceedances 'as short as possible'?
*Please also indicate if you think there are any **weaknesses** in the plan.*
 - b. If your Member State has such a plan, how is the legal requirement of keeping exceedances 'as short as possible' satisfied? *Please outline any challenges (legal or otherwise) in meeting this requirement in your Member State.*
11. Whether or not your Member State has an Air Quality Plan, please outline the **key** national regulatory measures that contribute towards compliance with EU air quality standards in your Member State.
For example, what are the main national legal measures that regulate polluting air emissions from:
 - households (eg restrictions on solid fuels, planning laws);
 - transport (eg clean air zones); and

- *industry (eg reliance in Industrial Emissions Directive or something more)?*
12. Has your Member State ever issued a Short-term Action Plan under Article 24? If so, please outline any notable features of the plan or aspects of its implementation (briefly).
 13. Which public bodies have legal responsibilities for meeting air quality standards in your Member State?
 14. Are there any legal requirements for different public bodies who have control over different air pollution sources to coordinate their efforts in any way to work towards air quality standards? (For example, different regulators may control highways, airports, local urban planning decisions, large industrial installations, and so on.)

Enforcement of Air Quality Law

15. What is the primary mode for enforcing of air quality law in your Member State?
16. Have there been court cases concerning the enforcement of air quality law in your Member State? *Please outline major cases or themes in key cases only.*
17. Please outline any other major challenges faced in your Member State for enforcing the AQD, or any other applicable air quality law.

A Controversial Source of Air Pollution: Regulation of Vehicle Emissions Systems

Many Member States are currently subject to infringement proceedings by the Commission in relation to vehicle type approval rules. This is currently prescribed under Framework Directive 2007/46/EC establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles [2007] OJ L263/1 and Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information [2007] OJ L171/1.

Amongst other things, this legislation requires Member States to have 'effective, proportionate and dissuasive' penalty systems in place to deter car manufacturers from illegal practices, such as installing defeat devices. This legislation was overhauled in 2018 by Regulation (EU) 2018/858 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, amending Regulations (EC) No 715/2007 and (EC) No 595/2009 and repealing Directive 2007/46/EC [2018] OJ L151/1, which will apply from 1 September 2020.

18. How has your Member State implemented these EU vehicle type approval rules? Have there been any controversies in transposing these rules?

19. What legal measures have been taken in your Member State (if any) against car manufacturers which have failed to comply with vehicle type approval rules? *These legal measures might include court cases, including between car buyers and manufacturers.*

Case Study

Martha is living in an urban area in your Member State, and her children have developed asthmatic symptoms (i.e. a diagnosed respiratory illness). She becomes aware that the local air quality exceeds standards laid down in the AQD. Her house is next to a main road, which is a heavily used bus route on which bus operators use diesel vehicles. The town also has a number of industrial plants, a coal fired power station, and a number of intensive farms. It is unclear to her precisely which pollution source is causing the breaches of air quality standards, or what their respective contributions might be to the local air quality problem.

What sort of legal action could Martha take in your Member State? And against whom? What remedies do the courts possess? What are the financial implications of bringing such a case? Might there be other regulatory avenues available to Martha instead?