



21.5.2019

NOTICE TO MEMBERS

Subject: Petition 1083/2013 by Wolfdietrich Burde (German) concerning inadequate Commission monitoring of environmental infringements in Freiburg im Breisgau, Germany

1. Summary of petition

The petitioner indicates that he has received no answer to either of his online complaints to the Commission of March and April 2013 regarding infringements of Union air quality legislation and the failure of the German authorities to reduce nitrous oxide emissions by 2015 as required. The relevant deadline has already been extended and subsequently annulled by the authorities, despite the fact that the city of Freiburg is in a position to comply within the requisite period.

2. Admissibility

Declared admissible on 26 February 2014. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 17 July 2015

The Commission addressed an EU Pilot request to Germany with regard to the breach of the ambient air quality limit values for NO₂ under the Directive 2008/50/EC on ambient air quality and cleaner air for Europe¹ in a number of air quality zones in September 2014.

In June 2015 the Commission addressed a letter of formal notice to Germany for its failure to comply with the ambient air quality limit values for NO₂ for several consecutive years in a number of air quality zones including the zone Ballungsraum Freiburg, which is the subject of this petition. In the letter of formal notice, the Commission is also of the view that Germany

¹ OJ L 152, 11.6.2008, p. 1–44.

has failed to take appropriate measures in those zones to keep the period of non-compliance as short as possible as required by the Directive 2008/50/EC.

Conclusion

The Commission addresses the concerns raised by the petitioner through the above-mentioned infringement procedure.

4. Commission reply (REV), received on 28 October 2016

Air pollution remains one of the biggest environmental health issues in the EU, causing over 400.000 premature deaths each year. In Germany alone, over 60.000 people die prematurely each year due to exposure to air pollution.

Directive 2008/50/EC on ambient air quality and cleaner air for Europe sets limit values for concentrations of polluting substances in the air, with the aim of avoiding, preventing or reducing harmful effects on human health and/or the environment as a whole. This Directive provides an obligation of results, not an obligation of means; the choice of means to achieve the result is left to the appreciation of the Member States. This means that the Directive does not empower the Commission to impose a ban on certain measures taken by a city.

Regarding the concentration of NO₂ in the air, Directive 2008/50/EC stipulates that the annual limit value requires that an average concentration of 40µg/m³ is not to be exceeded. The average concentration in Freiburg has been reported to be above the annual limit value since 2010 (the year by which the limit value should be met). According to the annual air quality reports submitted by Germany to the Commission, the maximum annual mean NO₂ concentration in Ballungsraum Freiburg has dropped from 70µg/m³ to 56µg/m³ between 2010 and 2015. Despite the downwards trend, Freiburg was still exceeding the annual limit value for NO₂ by 40% in 2015.

In September 2014 the Commission addressed an EU Pilot request to Germany with regard to the breach of the ambient air quality limit values for NO₂ under the Directive 2008/50/EC on ambient air quality and cleaner air for Europe¹ in a number of air quality zones.

In June 2015 the Commission addressed a letter of formal notice to Germany for its failure to comply with the ambient air quality limit values for NO₂ for several consecutive years in a number of air quality zones, including the zone Ballungsraum Freiburg which is the subject of this petition. In the letter of formal notice, the Commission is also of the view that Germany has failed to take appropriate measures in those zones to keep the period of non-compliance as short as possible as required by the Directive.

Freiburg has announced an update ("Fortschreibung") of its 2012 AQ plan for 2015, but it has not been published yet.²

¹ OJ L 152, 11.6.2008, p. 1–44.

² <https://rp.baden-wuerttemberg.de/rpf/Abt5/Ref541/Luftreinhaltung/Seiten/Dokumente-Freiburg.aspx> .

Conclusion

It is primarily for the national competent authorities to correctly implement EU legislation. Moreover, the national administrative bodies in charge of the implementation of the EU legislation have better means to address specific situations of non-compliance if the concerns are found to be justified.

However, due to persistent non-compliance with the limit values, the Commission has already started infringement procedures against Germany for breach of Articles 13 and 23 of Directive 2008/50/EC with regard to the limit values for NO₂ (and PM₁₀).

5. Commission reply (REV II), received on 31 March 2017

According to the latest annual air quality report submitted by Germany to the Commission, Freiburg continued to exceed the limit value for the annual mean NO₂ concentration of 40 µg/m³ established by Directive 2008/50/EC by 16 µg/m³ (40%) in 2015.

Since NO₂ exceedances still occur in many German cities, the Commission has taken additional steps in its infringement procedure against Germany addressing this issue. In February 2017, it followed up its EU-pilot request sent in September 2014 and its letter of formal notice of June 2015 with a reasoned opinion. Freiburg is located in one of the 28 zones that are subject to this reasoned opinion. A reasoned opinion is the last step of an infringement procedure before a potential referral to the European Court of Justice, if the air quality situation does not improve sufficiently.

It is worth noting, that while the Commission takes the position that much more effort is necessary at local, regional and national levels to meet the obligations of EU rules and safeguard public health, it is up to the Member State authorities to choose the appropriate measures to address exceeding NO₂ limits.

http://europa.eu/rapid/press-release_IP-17-238_en.htm

Conclusion

The infringement procedure against Germany regarding NO₂ exceedances is steadily moving along, because the limit value for the annual mean NO₂ concentration established by Directive 2008/50/EC continued to be exceeded in many German cities, including Freiburg, in 2015.

6. Commission reply (REV III), received on 29 November 2017

According to the latest annual air quality report submitted by Germany to the Commission, the maximum measured annual mean NO₂ concentration in Freiburg dropped from 56 µg/m³ in 2015 to 41.3 µg/m³ in 2016.

The reason for this unexpected substantial drop is that the monitoring station measuring the highest NO₂ concentrations in the past at Schwarzwaldstrasse in Freiburg did not meet the data quality standards in 2016. It only produced valid measurements for 60% instead of 85%

of the year. For 2016, this particular station reported an annual mean NO₂ concentration of 50 µg/m³. However, this value was not taken into account in the official assessment of the air quality zone due to the lack of valid data.

Conclusion

According to the annual air quality report for 2016 submitted by the German authorities, Freiburg has come close to complying with the air quality standards for NO₂. However, given the failure of the monitoring station that measured the highest concentrations in the past, the air quality report for 2017 is likely to show a higher concentration for this air quality zone again.

7. Commission reply (REV IV), received on 21 May 2019

The Commission had already stated in its third observations on this petition that the reduction of the annual mean nitrogen dioxide (NO₂) concentration from 56 µg/m³ in 2015 to 41.3 µg/m³ in 2016 was likely to be somewhat reversed in 2017. This is because the supposed reduction in 2016 was due to the monitoring station in the Schwarzwaldstraße, where the highest values were reported, not having met the data quality objectives set out in Annex 1 of Directive 2008/50/EC¹. The measurements reported by this station in 2016 (namely, 50 µg/m³) were thus not taken into account.

In view of this, it is not surprising that for 2017, the reported figure is, as the petitioner noted, at 49 µg/m³ and therefore still clearly in exceedance of the limit value imposed by Directive 2008/50/EC.

The Commission is aware of such exceedances in Freiburg and in many other German cities. It shares the petitioner's concern that at least some air quality plans do not seem to propose sufficient measures to successfully lower the annual mean concentrations in a timely manner.

This is why the Commission has decided to bring the matter to the Court of Justice of the European Union.

Conclusion

The limit value for the annual mean NO₂ concentration established by Directive 2008/50/EC continues to be exceeded in many German cities, including Freiburg.

Therefore, in October 2018, the Commission brought the matter before the Court of Justice of the European Union.

¹ 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, *OJ L 152, 11.6.2008, p. 1–44*.