



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 94/21

Luxembourg, 3 June 2021

Judgment in Case C-635/18
Commission v Germany

Between 2010 and 2016, Germany systematically and persistently exceeded the limit values for nitrogen dioxide (NO₂)

It also infringed its obligation to adopt appropriate measures in good time to ensure that the exceedance period is kept as short as possible in the 26 zones concerned

By today's judgment, the Court of Justice held that **Germany had infringed the Air Quality Directive¹ by systematically and persistently exceeding, as from 1 January 2010 up to and including 2016,² the annual limit value for nitrogen dioxide (NO₂) in 26 of the 89 zones and agglomerations assessed.³**

The infringement concerns the agglomeration of Berlin, the agglomeration and district of Stuttgart, the district of Tübingen, the agglomeration of Freiburg, the district of Karlsruhe (without agglomerations), the agglomeration of Mannheim/Heidelberg, the agglomeration of Munich, the agglomeration of Nuremberg/Fürth/Erlangen, Zone III Central and Northern Hesse, the agglomeration I Rhine-Main, the agglomeration II Kassel, the agglomeration of Hamburg, Grevenbroich (Rhineland mining area), Cologne, Düsseldorf, Essen, Duisburg/Oberhausen/Mülheim, Hagen, Dortmund, Wuppertal, Aachen, urban and rural areas in North Rhine-Westphalia, Mainz, Worms/Frankenthal/Ludwigshafen and Koblenz/Neuwied.

Furthermore, Germany infringed the directive by systematically and persistently exceeding, during that period, the hourly limit value for NO₂ in two of those zones, namely the agglomeration of Stuttgart and the agglomeration I Rhine-Main.⁴

In addition, by not adopting, as from 11 June 2010, appropriate measures to ensure compliance with the limit values for NO₂ in all the zones at issue, Germany has failed to fulfil its obligations under the directive and, in particular, the obligation to ensure that air quality plans provide appropriate measures so that the period during which the limit values are exceeded is kept as short as possible.

The Court therefore allows the action brought by the European Commission, for the abovementioned limit periods, in its entirety.

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 2008 L 152, p.1). (1) This directive provides in respect of nitrogen dioxide (NO₂), as from 1 January 2010, an *annual* average limit value of 40 µg/m³ and an *hourly* average limit value of 200 µg/m³, that limit may be exceeded not more than 18 times a calendar year. (14)

² The present action does not concern the following years (2017 and 2018), in respect of which Germany submits that the limit values concerned were complied with. (75, 83)

³ For 2016, the values declared by Germany were, in all of those 26 zones, between 2.5 % and 105 % higher than the annual limit value of 40 µg/m³. In sixteen of those zones, the concentrations of NO₂ in the air were 25 % higher, or more. In seven of the zones, the concentrations were 50 % higher, or more. In some years, the observed exceedance in some of those zones, such as the agglomeration of Stuttgart for the years 2010 to 2011 and the agglomeration of Munich, for the year 2010, was approximately 150 % higher. (80)

⁴ In the agglomeration of Stuttgart and the agglomeration 1 Rhine-Main, the concentrations found each year from the year 2010 up to and including the year 2016, exceeded by at least 50 % the 18 times per calendar year tolerated as regards exceedances of the hourly limit value of 200 µg/m³, since that value was exceeded between 28 and 183 times a year with, however, some decline over that period. (81)

The Court rejects, in particular, the argument put forward by Germany that the exceedances of the limit values for NO₂ are essentially attributable to the Commission's own omissions, in so far as the Commission has been negligent concerning the proposal of effective legislation to limit emissions of that pollutant by diesel vehicles. According to Germany, those vehicles include those conforming to the 'Euro 5' standard, which were shown to be very problematic as regards compliance with the limit values for NO₂ laid down by the Air Quality Directive.

The Court notes, in that regard, that apart from the fact that motor vehicles subject to EU-level standards are not the only cause of NO₂ emissions, EU rules applicable to type approval of motor vehicles cannot exempt Member States from their obligation to comply with the limit values established by the directive.

The Court accepts that the fact that a Member State exceeds the limit values for NO₂ laid down by the directive does not in itself suffice for it to be held that that Member State has also failed to fulfil its obligation to ensure that the time period during which the limit values for NO₂ are exceeded is kept as short as possible.

It follows, however, from the detailed analysis of the documents before the Court that Germany has clearly not adopted appropriate measures in good time to ensure that the time period during which the limit values for NO₂ are exceeded is kept as short as possible in the 26 zones at issue.

NOTE: An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355

Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106