



Air pollution in court in the European Union

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Task Force on Access to Justice under the Aarhus Convention

Twelfth meeting:

Access to justice in cases relating to air quality

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Introduction to ClientEarth

- ClientEarth is a non-profit environmental law organisation
- We use law, science and policy to tackle key environmental challenges
- We work on climate change, energy, environmental justice, biodiversity, forests and human health


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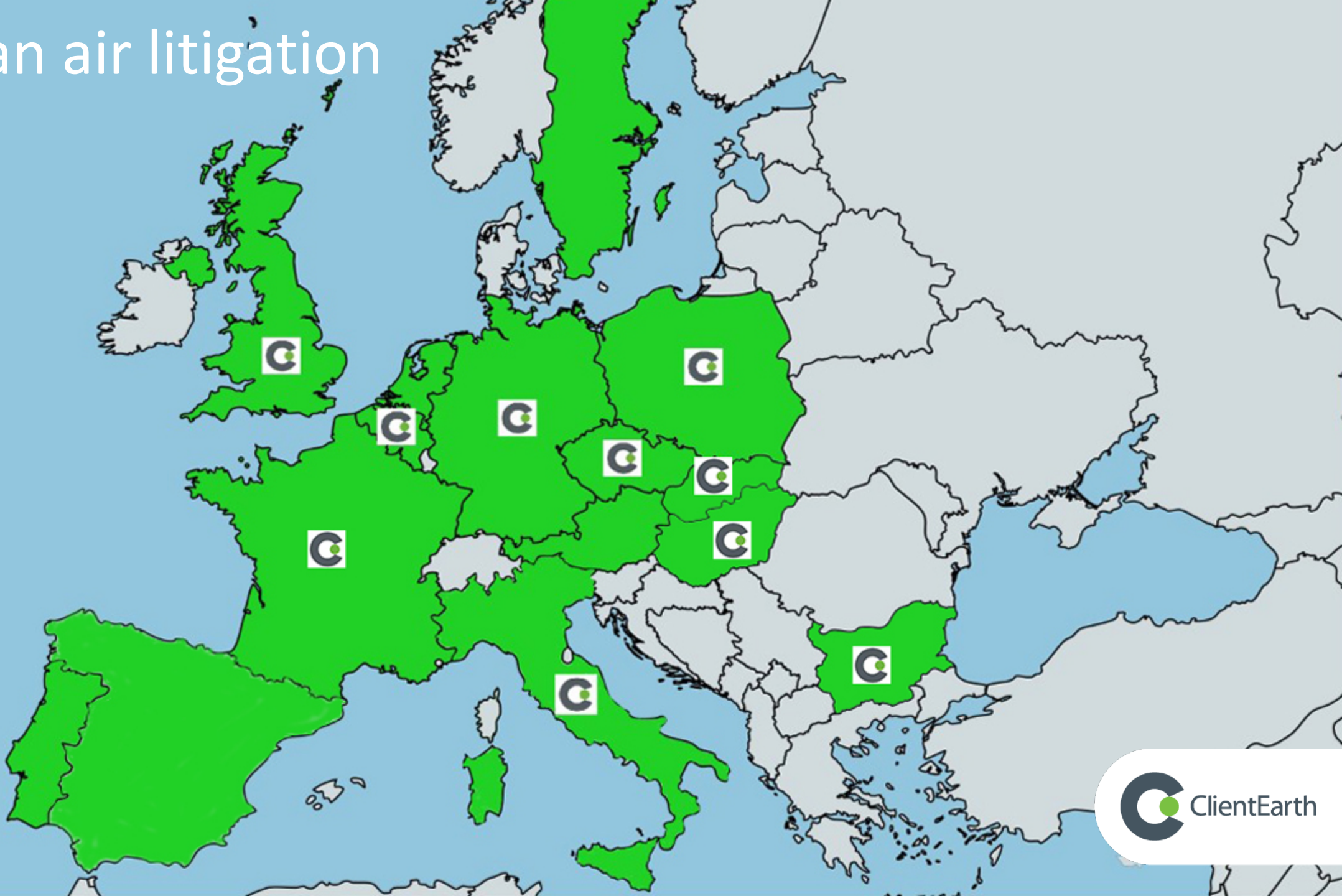
1. Overview of the legal framework

The Air Quality Directive 2008/50/EC

Pillar	Relevant EU provision	Assessment
Public Information	Article 26 Air Quality Directive	✓
Public Participation	Article 2 Directive 2003/35/EC	●
Access to Justice	No express provision	✗

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- Case C-237-07 Janecek v Freistaat Bayern: right to clean air and to an air quality plan
 - Case C-404/13 – ClientEarth v UK (SoSEFRA): right to an adequate air quality plan and to an effective remedy

EU Clean air litigation



2. Good practices

Selection of successful clean air cases

Country	Ruling
Austria	<ul style="list-style-type: none">Highest Administrative Court ruling on 19 February 2018 (link)
Belgium	<ul style="list-style-type: none">Interlocutory judgment of Rechtbank van eerste aanleg te Brussel on 15 December 2017 (Case 2016/3659/A) (link)Preliminary reference before CJEU (Case C-723/17, <i>Craeynest e a.</i>)
Czech Republic	<ul style="list-style-type: none">Supreme Administrative Court ruling on 21 December 2017 (link)
France	<ul style="list-style-type: none">Conseil d'État ruling on 11 July 2017 (link)
Germany	<ul style="list-style-type: none">CJEU ruling in Case C-237/07 <i>Janecek v Freistaat Bayern</i>Federal Administrative Court ruling on 5 September 2013 – BVerwG 7 C 21.12 (link)Federal Administrative Court rulings on 27 February 2018 – BVerwG 7 C 26.16 (link) and 7 C 30.17 (link)
Italy	<ul style="list-style-type: none">Council of State ruling on 14 December 2012 (link)
Slovakia	<ul style="list-style-type: none">Regional Court of Bratislava ruling on 13 November 2018 (link)
Spain	<ul style="list-style-type: none">High Court of Valladolid ruling on 19 October 2018 (link)
United Kingdom	<ul style="list-style-type: none">CJEU ruling in Case C-404/13 <i>ClientEarth v UK (SoSEFRA)</i>UK Supreme Court ruling on 29 April 2015 in <i>ClientEarth (No1)</i> [2015] UKSC 28 (link)High Court ruling on remedies in <i>ClientEarth (No2) vs SSEFRA, [2018] EWHC 315 (Admin)</i> (link)

3. Barriers and challenges

Barriers to access to justice in Poland

- Some of the worst air quality in Europe
- Case in Silesia rejected by Supreme Administrative Court on 23 January 2018 (File No. II OSK 3218/17):
 - Air Quality Plans are local laws, subject to *lex specialis* for standing (article 90(1) of the Act of Provincial Self-Government)
 - Individuals and E-NGOs do not have legal interest to challenge
 - Refusal to interpret/disapply Polish law in line with EU law
 - Refusal to refer preliminary question to CJEU
- Follow-up:
 - Communication ACCC/C/2016/151
 - Complaint to EU Commission lodged in February 2019

Barriers to access to justice in Bulgaria

- Some of the worst air quality in Europe
- Supreme Administrative Court rejected cases in Sofia (ruling No. 13138 on 1 November 2017) and Plovdiv (ruling No. 16049 on 20 December 2018)
- Follow-up:
 - Communication ACCC/C/2018/161
 - Complaint to EU Commission lodged in February 2019

Other barriers and challenges

- Timeliness
- Effective remedies (Case C-752/18 *Deutsche Umwelthilfe*)
- Access to justice at EU level:
 - General Court of the EU ruling on 13 December 2018 in Joined Cases T-339/16, T-352/16 and T-391/16, *Paris, Brussels and Madrid v Commission*
 - Case T-677/17 *ClientEarth v Commission* - ongoing

Conclusions

- Lack of express provision on access to justice in air quality matters creates uncertainty and inconsistency
- CJEU ruling in *Janecek* and *ClientEarth* cases is helping individuals and NGOs to protect right to clean air before national courts
- Barriers and challenges remain for standing, timeliness and effective remedies at both national and EU level

Thank you

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