



European
Commission

PROMOTING EFFECTIVE ACCESS TO JUSTICE IN CASES RELATED TO AIR QUALITY

2022 Judicial Colloquium and Access to Justice
Task Force
ADJUDICATION OF CASES RELATED TO
CLIMATE CHANGE AND AIR QUALITY
26-27 April 2022

Towards
stronger
environmental
governance

EFFECTIVE
AND EFFICIENT



ACCOUNTABLE



FOLLOWS THE
RULE OF LAW



PARTICIPATORY



TRANSPARENT



European Commission

Directorate General for Environment

Unit E.4 – Environmental Rule Of Law And

Governance



I. General introduction

II. Sectoral evaluations/initiatives
and access to justice

III. 'Dieselgate' cases and
ramifications



The Green Deal Communication



(i) consider revising the Aarhus Regulation ...

(ii) The Commission will also take action to **'improve access to justice before national courts in all Member States'**.



The priority areas of action under the Communication on access to justice

1. **Member States to secure correct transposition of EU secondary law**
2. **Co-legislators to include provisions on access to justice in EU legislation for new or revised EU law concerning environmental matters**
3. **The review by the Member States of their own national legislative and regulatory provisions to remove barriers (EU jurisprudential and statutory access to justice)**
4. **The obligation of national courts to guarantee the right of individuals and NGOs to an effective remedy under EU law.**





The Commission support



1. Improving access to information and monitoring (para 41)



2. Engaging with stakeholders, continuing cooperation with judges (para 40)



3. Legislative proposals – legal certainty (para 33)



4. Guardian of the Treaties (para 38)



Fitness Check of the AAQ Directives

In 2019, an evidence-based, retrospective evaluation offered a number of lessons learnt:

- Air quality remains a major **health and environmental concern**;
- Air quality standards have been instrumental, and **partially effective**, to reduce pollution;
- Current EU standards are **less ambitious than scientific advice**;
- **Limit values** have been more effective than other types of air quality standards;
- **Legal enforcement action** by European Commission, and civil society, works *(with some caveats)*;
- Scope to further harmonise **monitoring, modelling, and air quality plans**;
- Not all reported data equally useful, **e-reporting** allows for further efficiency.

A decade of air data

For period 2008 to 2018 from all Member States

Stakeholder feedback

Open public consultation and expert questionnaires

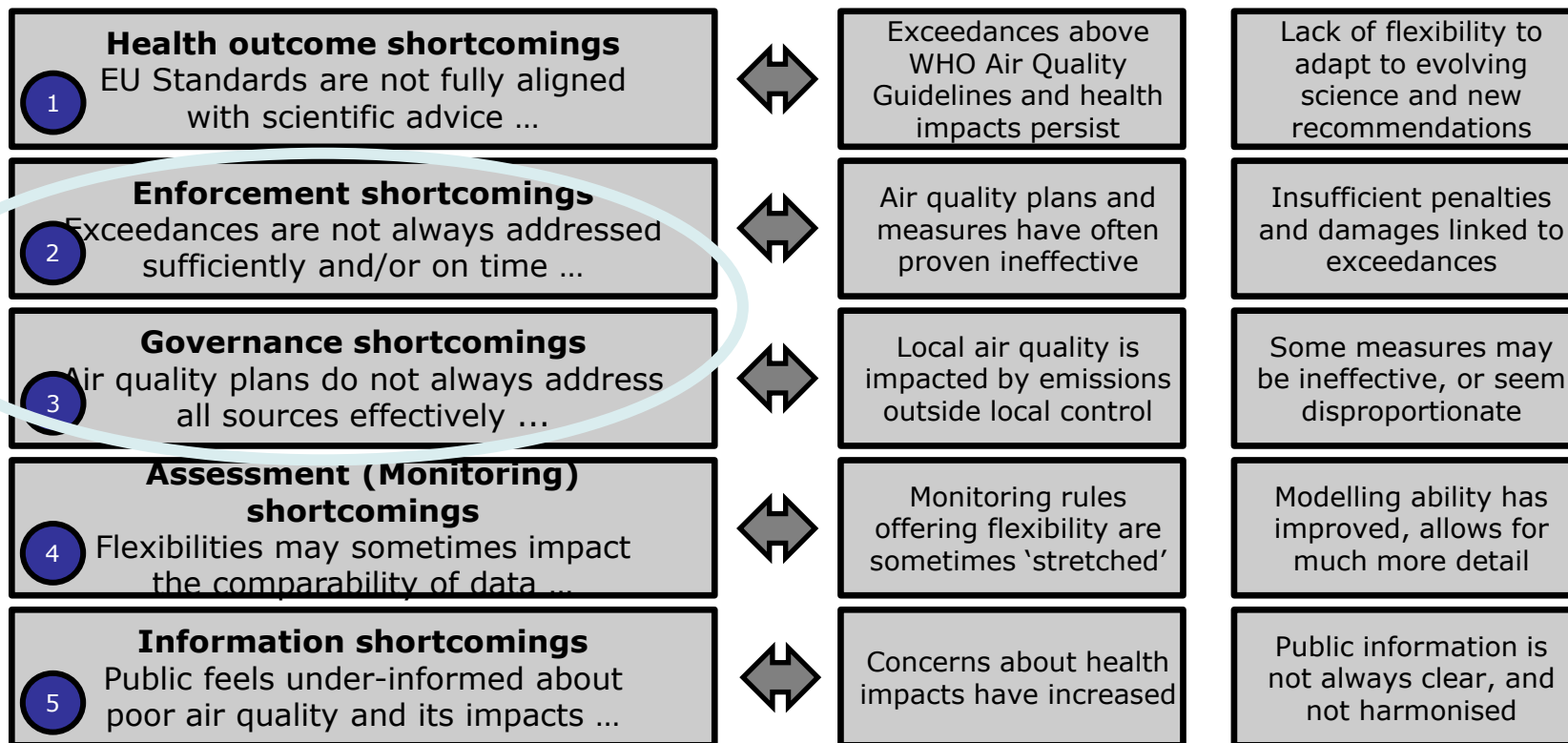
Seven case studies

BG,DE,ES,IE,IT,SE,SK
each with specific focus

Literature & analysis

600 scientific sources & a cost-benefit model

5 shortcomings ... and their drivers



Air quality implementation shortcomings

Frequency, extent and magnitude of exceedances has declined, but ...

Implementation shortcomings

Exceedances are not always addressed sufficiently and/or on time ...



Air quality plans and measures have often proven ineffective



Insufficient penalties and damages linked to exceedances

As of January 2021, still **31 cases** addressing 18 Member States (+ 1 vs UK) related to bad application:

- 15 particulate matter (PM₁₀ and/or PM_{2.5})
- 13¹ nitrogen dioxide (NO₂)
- 1 sulphur dioxide (SO₂)
- 2 monitoring problems

Of these, 14 cases (i.e. 9 Member States + 1 vs UK) have been referred to the Court of Justice of the EU.

With 8 rulings so far: BG, PL, RO, IT, HU (for PM₁₀) and UK, DE, FR (for NO₂).

These cases address both exceedances of air quality standards and not keeping these as short as possible.

Revision to focus on three policy areas



In line with the European Green Deal, the revision of the Ambient Air Quality Directives will augment the current legislation looking at three policy areas

- **Policy area 1:** closer alignment of the **EU air quality standards** with scientific knowledge including the latest recommendations of the World Health Organization (WHO).

 **Policy area 2:** improving the **air quality legislative framework**, including provisions on penalties and public information, in order to enhance effectiveness, efficiency and coherence.

- **Policy area 3:** strengthening of **air quality monitoring, modelling and plans**.

→ *to be further developed into more detailed options/scenarios for each policy area, also based on inception impact assessment*

Role of national courts and civil society



EU Court: preliminary rulings

- **C-237/07, Janecek**
Entitlement of individuals, whose health has been impaired, to have an action plan drawn up
- **C-404/13, ClientEarth**
National courts' obligation to ensure an air quality plan is established in case of exceedances
- **C-723/17, Craeynest**
Locating sampling points and establishing exceedances
- **C-752/18, Deutsche Umwelthilfe**
Enforcement of obligations against competent authorities

National litigation to enforce obligations

- AAQ Directives: NGOs seeking establishment / updates of air quality plans, checks on monitoring network
- (NEC Directive: challenge to NAPCPs)

! Importance of access to justice guaranteed in national systems

+ 8 judgments on failure to fulfil obligations by MS

Clean Air Milestones 2020 to 2023 (indicative)



III. ‚Dieselgate‘ Cases

What are the cases about?

*Several preliminary references on illegal defeat device in the meaning of **Article 5(2) of Regulation No 715/2007 on type approval of motor vehicles** with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6).*

The national courts also asked questions related to
- the right of consumers to seek compensation from manufacturers in case of illegal defeat devices built in their cars.

Some of the references:

*Cases **C-873/19** ([AG Opinion delivered](#)), [C-100/21](#), [C-388/21](#),
Case [C-693/18](#) (delivered), [C-128/20](#) (AG Opinion), [C-134/20](#), etc.*

III. ‚Dieselgate‘ Cases (2)

What are the main questions referred to the Court of Justice?

Can NGOs challenge before a national court a type approval decision on the grounds that an illegal defeat device was used?

Does the type approval regulation (EC) 705/2007 in conjunction with Directive 2007/46/EC also protect the interest of the individual consumer, e.g. the right to make economic choices?

Does a claim arise in these case for compensation on the part of the vehicle purchaser against the manufacturer directly based on EU law?

III. ‚Dieselgate‘ Cases (3)

What are the conclusions at EU level drawn from ‘Diesel-gate’ ?

- *Entry into application of the amendments to the **UCPD** introduced by **Directive (EU) 2019/2161** on better enforcement and modernisation of Union consumer protection rules.*
- ***Explicit right to individual remedies for victims of unfair commercial practices** in a new Article 11a of the UCPD, applicable as of 28 May 2022.*
- *Provides that consumers harmed by unfair commercial practices have **access to proportionate and effective remedies, including compensation for damage** suffered by the consumer and, where relevant, a price reduction or the termination of the contract.*