

Co-operation with national judges in the field of environmental law under the European Commission Framework Contract ENV.A.I/FRA/2012/0018

Training module

HOW TO HANDLE COURT PROCEEDINGS INVOKING NON-COMPLIANCE WITH EU AIR QUALITY AND NOISE LEGISLATION

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Organised by Academy of European Law

Fictitious Case Study on Ambient Air Quality

ERA Workshop “How to handle court proceedings invoking non-compliance with EU air quality and noise legislation”

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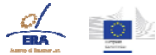
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The Facts

The environmental authority of B. city has issued a permit for a new industrial installation falling under Directive 2010/75. The permit requires the application of best available techniques (BAT). The installation would have significant impacts on air quality, in particular on levels of nitrogen dioxide, PM₁₀ and benzo(a)pyrene.

Because the values provided for these pollutants by EU law had been exceeded before the installation was authorised, the same authority has already adopted an air quality plan that foresees the attainment of these values within three to five years. However, the new installation has not been taken into account, yet.



The Dispute

Assume that you are sitting as a court of last instance.

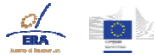
You receive two actions by different plaintiffs, both directed against the environmental authority of B. city.



1st Action

The plaintiffs apply for the annulment of the permit. They argue the following

- The installation is not permissible because it would make the existing infringement of air quality standards worse.
- The permit suffers from procedural defects: All the materials relating to the project, in particular the environmental impact assessment [EIA], the application for a permit and the permit itself only discuss the emissions of the installation. In spite of relevant criticism during the public consultation neither their impact on local air quality standards nor the necessary adaptations of the air quality plan are addressed.



2nd Action

The plaintiffs of the second action ask for an order obliging the authority to adopt the modifications to the air quality plan that are necessary because of the new installation.

They also apply for interim measures preventing the implementation of the permit until a modified plan is in place. They argue that a premature implementation would make it more difficult if not impossible to attain the values foreseen by EU air quality legislation.

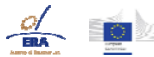


The Defence

The environmental authority, supported by the developer of the project, argues that it is sufficient that the installation will respect all the relevant BAT standards.

As regards the discussion of impacts on air quality, the developer claims that local air quality is not his responsibility as long as the installation respects the applicable emission standards.

The authority insists that the permit and air quality, including the plan, are two distinct matters. The air quality plan would be updated in due time.



Your Task

Please prepare a preliminary assessment of the two actions and draft possible questions that you could submit to the Court of Justice. In this context you should form an opinion whether a reference to the Court of Justice is necessary.

These results should be presented in today's closing session.

