



Frank Bold

Legal tools for fighting air pollution in the EU

Fighting the Air Pollution
in Industrial Cities of Europe

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Overview

1. Air Quality Directive
2. National Emission Ceilings Directive
3. Industrial Emissions Directive
4. Infringement procedure

Air Quality Directive

Air Quality
Protection Tools

National Emission
Ceilings Directive

Industrial Emission
Directive

Air Quality Directive

= Directive 2008/50/EC on ambient air quality and cleaner air for Europe

1. Limit values for ambient air quality
2. Requirements for air quality monitoring and assessment
3. Air quality management tools

Air Quality Directive – Limit

Pollutant	AQD yearly average ($\mu\text{g}/\text{m}^3$)	AQD 24h average ($\mu\text{g}/\text{m}^3$)
PM _{2,5}	25 (2015) -> 20 (2020)	-
PM ₁₀	40	50 (max. 35x/year)
NO ₂	40	200 (max 18x/year)
SO ₂	-	125 (max. 3x/year)
benzene	5	-

Limit values -> level fixed on the bases of scientific knowledge to be attained and not to be exceeded

Alert thresholds -> level beyond which there is a risk to human health from brief exposure

Air Quality Directive - Plans

- **Short-term action plans (Art. 24)**
 - Relating to particular areas – motor-vehicle traffic, construction work, ships at berth, industrial plants, domestic heating
 - Short-term operational measure to stop and reverse immediate worsening air pollution
- **Air quality plans (Art. 23)**
 - Large conceptual documents providing comprehensive strategy to tackle air pollution in zones and agglomerations where LVs are exceeded
 - **Objective: bring excessive air pollution at least on the limit values in as short time as possible**
 - Set of measures efficient enough to reach the objective

AQPs and legal actions in CR

2Q 2016	AQPs adopted by Ministry of Environment
3Q 2016	FBS represents the claimants in legal actions to revoke the AQPs for Brno, Prague, Ostrava/Karviná/Frýdek-Místek and zone North-West
2017	Actions were denied at first instance courts, FBS and claimants appealed to the Supreme Administrative Court (SAC) in all cases except for Prague (proceedings suspended at first instance until the SAC decisions in other cases)
20. 12. 2017	SAC revokes the decision of first instance court and most of the AQP itself in the Ostrava agglomeration case, creating a ground-breaking precedent
1Q 2018	Prague, Brno and zone North-West judgements

Claimants' legal arguments

AQD and the Air Quality Act basic requirement is:

In the event of exceedances of those limit values for which the attainment deadline is already expired, the AQPs shall set out appropriate measures, so that the exceedance period can be kept as short as possible.

Specific objection raised against the plans

- Detail of proposed measures
- Timeframe of implementation of proposed measures
- Evaluation and quantification of efficiency of proposed measures
- Proposed target deadline of 2020 to meet AQ limits
- Not taking into account findings of SEA

The Ostrava Judgement

- Court heavily relied on European AQP case law
- The AQPs do not and should contain:
 - **Quantification of expected share of each proposed measure to improving air quality**
 - **Implementation timeline**
 - **Prioritization of proposed measures based on their efficiency (cost-benefit efficiency)**
- All these requirements pointed out in SEA – AQPs did not adopt its conclusions sufficiently
- SAC pointed out that Czech legislation does not directly suggest all these requirements – possible wrong transposition

Next steps for Czech AQPs

- Ministry of Environment will update all AQPs by the end of 2019 and re-adopt the revoked parts of the AQPs
- An amendment to the Air Quality Act has been adopted, incorporating some of the SAC's requirements, but limiting public participation and access to court

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National Emissions Ceilings Directive

The „new NEC“ Directive 2016/2284/EU (replacing Directive 2001/81/EC)

National Air Pollution Control Programmes –1 April 2019

- National emissions reduction commitments
- Obligation to tak all necessary measures to limit anthropogenic emissions
- Public consultation
- Reporting to the Commission – extensive information on atmospheric emissions on a number of pollutants

National Emissions Ceilings Directive

Czech National emission reduction commitments
(compared with 2005)

	SO ₂	NO _x	NM _{VOC}	NH ₃	PM _{2,5}
2020-2029	45 %	35 %	18 %	7 %	17 %
2030+	66 %	64 %	50 %	22 %	60 %

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Industrial Emission Directive

- Directive 2010/75/EU
- Rules on integrated prevention and pollution control from industrial facilities
- Binding conditions for operation of facilities concerned in operation permit
 - Binding emission limit values & other environmental obligations
 - Ensured public participation – substantial change

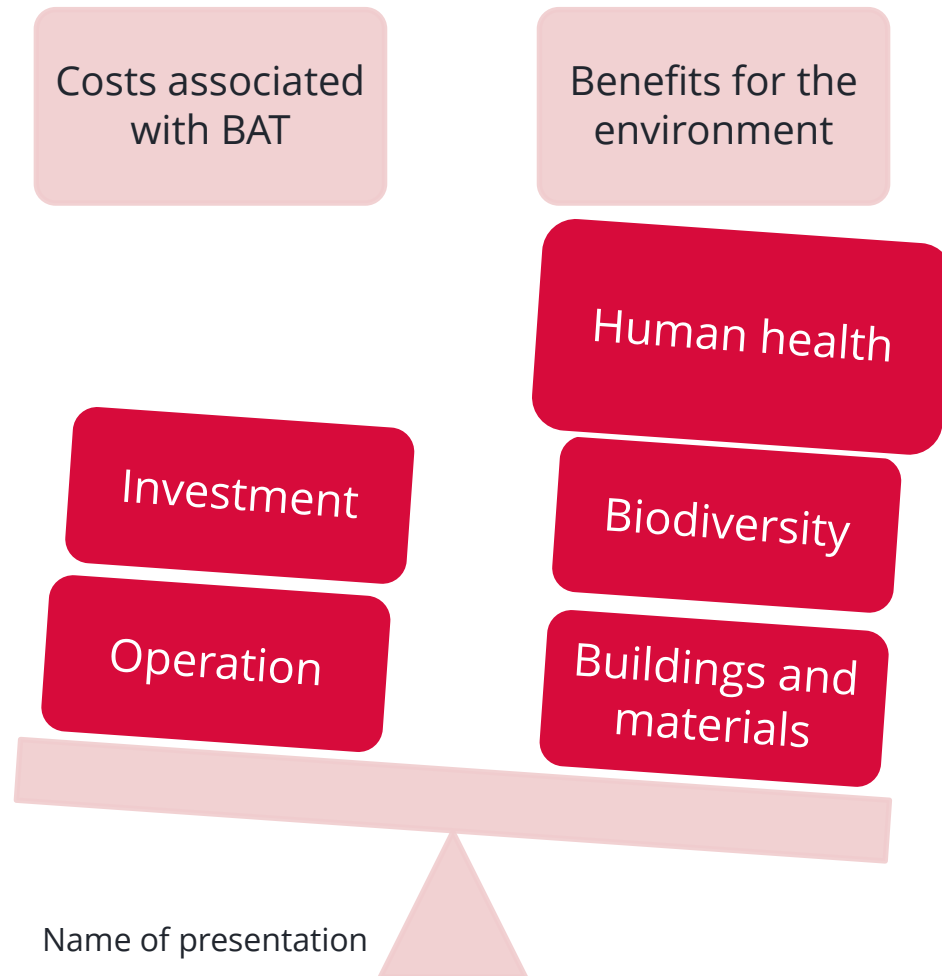
Industrial Emission Directive - BAT



BAT derogation (Art. 15(4))

- cost-benefit analysis
- geographical location/technical characteristics of installation concerned

Industrial Emission Directive - BAT



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Air quality infringements



- Bulgaria (April 2017)
 - Systematic and continuous exceedances of PM10
 - Failure to adopt air quality plans
- Poland (February 2018)
 - Longterm exceedances of PM10
- 6 other member states referred to CJEU (May 2018)

Right to Clean Air



- Legal actions to enforce and promote compliance with air quality limit values
- Legal actions, capacity building workshops for relevant stakeholders, watchdogging activities
- Frank Bold and Deutsche Umwelthilfe
- <https://www.right-to-clean-air.eu/en/>





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