

Comité  
N65

Stichting Comité N65 Ondergronds Helvoirt

European Commission  
Directorate General Environment  
Directorate E.2 Environmental Implementation  
Att.: Mr. Ion Codescu  
1049 Brussel, BELGIUM

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Uw ref.: Complaint: Chap(2016)3291  
Onze ref.: Complaint OnLine 17-10-2016  
Van: Comité N65OH, Helvoirt

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Dear Mr. Codescu,

Thanks very much for your elaborate answer dated January 22, 2017 on our complaint of 17-10-2016. It is true indeed that on all points that you quoted it looks as if all Dutch translations in law of Directive 2008/50/EC are completely in line with this Directive. Your conclusion that air quality is being calculated at the N65, and thus not measured directly, is also completely in line with the facts. And it is true that on almost all Dutch locations air quality is calculated by [NSL](#), not measured.

But your quotes focus almost entirely on art. 25 and 70 RBL. Therefore you overlooked the fact that the text of art. 22 RBL is indeed a direct and correct translation of the Directive ANNEX III part B. Important however is the fact that this article 22 RBL misses the heading: Macro scale siting of sampling points. And that heading has not been transposed in RBL for some reason. The practical result is that the EU-rules for macro scale siting are used for micro scale siting. This is explained as the "exposure principle", in Dutch "blootstellingsbeginsel". Thus the macro rule for siting in "the areas within zones and agglomerations where the highest concentrations occur to which the population is likely to be directly or indirectly exposed for a period which is significant in relation to the averaging period of the limit value(s)," is used to extend substantially the rules for micro scale siting. In fact, the Dutch government maintains in [public writing](#) that air quality needs to be assessed only where exposure is significant. And along busy roads in agglomerations, exposure is assumed to be non significant by these macro criteria allowing for micro calculations of air quality often far outside the 10 meter from the kerbside. This undermines completely all intentions of ANNEX III where part A maintains, "Ambient air quality shall be assessed at all locations except those listed in paragraph 2", and part C maintains that traffic-orientated siting: "shall be no more than 10 m from the kerbside".

This regardless of the discussion you raised in your point 2: Flexibility is possible as regards location. That discussion is not raised by the government in this context of busy roads.

This “exposure principle” or “blootstellingsbeginsel” is well explained on this [infosite](#) hosted by the government<sup>1</sup>. We stated our objection to this principle in the original complaint with the words in footnote<sup>2</sup>. When you look at the statements by the government in the civil legal proceedings quoted in this footnote<sup>3</sup>, there can be no doubt on these facts.

So this is a pure legal issue having nothing to do with local (often disputable) details. At stake is only the question whether Directive ANNEX III part B on: Macro scale siting of sampling points can be applied also for micro siting far outside the criteria given in the ANNEX III part C on: Micro scale siting of sampling points. When there is any chance that the rules for macro siting might also be used at micro siting, we suggest to bring the matter to the European Court of Justice.

You are right of course that local civil and administrative procedures are possible. It is also true that the Commission has only limited means at its disposal. Given however the fact that we talk here about a fully documented issue needing only legal interpretation there is no need to conduct inspections. Anyhow the principle established by the ECHR Strasbourg in the case [Janacek](#) that “individuals are entitled to rely on the provisions of a directive which are unconditional and sufficiently precise”, are wildly violated by willfully escaping a clear decision of the European Parliament. The EU-Commission even stated on [this decision](#): “Political agreement has been reached by a qualified majority, with Netherlands and Poland voting against, while Sweden abstained”. This escaping through the back door of unlawful interpretation constitutes a direct insult to the EU Parliament and Commission.

With your advice to seek redress at a national level, you overlook the fact that the NGO's involved have also very limited means, have spent many years now on this issue and more years to come given the government and judicial resistance, very close to lack of access to justice. They might give up to spend so much time, money and energy fighting as Don Quichote against legal windmills.

And without doubt you have realized the importance of the issue given the history (see footnote two) and consequences (maximum levels are exceeded on many places resulting in unnecessary mortality). Therefore we beg you to follow up this case.

With Kind Regards, Stichting Comité N65OH

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<sup>1</sup>[http://www.infomil.nl/onderwerpen/landbouw-tuinbouw/stof/handreiking-fijn/handreiking-fijn/bepalen-fijn-stof/plaats-toetsing/\(-kort-aanwezig/](http://www.infomil.nl/onderwerpen/landbouw-tuinbouw/stof/handreiking-fijn/handreiking-fijn/bepalen-fijn-stof/plaats-toetsing/(-kort-aanwezig/)

<sup>2</sup>Now the Ministry of Infrastructure and Environment took the position to accept the maximum 10 meter criterion but maintained that the criteria for Macro scale siting in the Directive 2008/50/EC Annex III, paragraph B are also applicable for Micro scale siting in paragraph A1. As a result air quality is assessed on locations beyond the maximum allowed 10 meter from the kerbside. The NSL therefore does not signal that maximum levels are exceeded on many places.

The argument of the Dutch State is that when there is no relevant exposure, there is no need to assess. But we all know that at the end of 2007 a battle raged in the European Parliament about amendments, notably 4 and 23 in the latest numbering, whether or not to include in micro scale siting this notion of relevant exposure as defined in section B for macro scale siting. Inclusion of that notion would imply a kind of exception on the obligation to assess at all locations and within 10 meter from the kerbside.

This battle was strongly supported by the Dutch government. But in the final text these proposed changes were not accepted. Even if they were accepted, there is sufficient evidence that near busy roads in agglomerations the highest concentrations occur and thus relevant exposure exists.

<sup>3</sup> Point 2 Pleading notes: <http://www.n65.nl/Civiel/Pleitnota-Staat-zitting-15-8-2016.pdf>

Point 3 Answer on Proof submitted: <http://www.n65.nl/Civiel/Reactie-Staat-dd-2-8-2016-op-akte.pdf>