

Subject: FW: Two questions on Directive 2008/50/EC of 21 May 2008 on ambient air quality and cleaner air for Europe

Date: Wed, 29 Jul 2015 13:22:26 +0000

From: <Marco.Gasparinetti@ec.europa.eu>

To: <bestuur@n65.nl>

CC: <Thomas.VERHEYE@ec.europa.eu>

References: <1438089281376.92861.51656@webmail3> <E1C9830ECA35AE4280FA9D726C92835F0DB68DD6@S-DC-ESTH02-J.net1.cec.eu.int> <4793FF942F41424ABAB1D6DC622A2F115F7E0492@S-DC-ESTG04-B.net1.cec.eu.int> <4793FF942F41424ABAB1D6DC622A2F115F7E049E@S-DC-ESTG04-B.net1.cec.eu.int> <C2C18AEB1380C04BB46824C14A4C562035F00E38@S-DC-ESTA02-J.net1.cec.eu.int>

Dear Mr. Spil,

Thomas Verheye (HoU) asked me to answer your email of yesterday, by which you share with us your interpretation of two specific provisions of Directive 2008/50/EC.

In both cases your interpretation appears to be in line with the letter and the purpose of the relevant provisions, and this will not change after the adoption of the Commission Directive which is amending (inter alia) the quoted paragraph of Annex III.

In particular:

As regards question 1: the ten meters requirement should be read as the maximum (and not the minimum) distance from the kerbside for this kind of sampling points.

As regards question 2: the criteria are cumulative, meaning that both need to be met.

Please note, however, that the authoritative interpretation of EU law is a prerogative of the EU Court of Justice, to which this kind of questions can be referred by national Courts where necessary in order to seek a preliminary ruling.

Having negotiated the Directive in the co-decision procedure, what we can therefore offer (on request) is just informal advice on what the provisions were intended to mean at the time of negotiation, and such interpretation is not binding.

Best regards,

Marco Gasparinetti

Principal Lawyer

European Commission

DG Environment, Unit C3

From: GHINEA Marilena (ENV) **On Behalf Of** VERHEYE Thomas (ENV)

Sent: Tuesday, July 28, 2015 4:08 PM

To: GASPARINETTI Marco (ENV); MUNOZ CUESTA Marta (ENV)

Cc: HENRICHS Thomas (ENV); BROCKETT Scott (ENV); VERHEYE Thomas (ENV)

Subject: FW: Two questions on Directive 2008/50/EC of 21 May 2008 on ambient air quality and cleaner air for Europe

Marco, Marta,

Please see the request below concerning the AAQ Directive.

Thanks,

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From: Bestuur@N65.nl [<mailto:bestuur@n65.nl>]
Sent: Tuesday, July 28, 2015 3:15 PM
To: VERHEYE Thomas (ENV)
Subject: Two questions on Directive 2008/50/EC of 21 May 2008 on ambient air quality and cleaner air for Europe

Hello Mr. Verheye,

As chairman of the [Comite N65](#) in Holland, I first apologize for addressing these two questions to you as head of the Air Unit of Directorate C in such an informal way. I considered phoning you on tel 322 295.96.39 but concluded that these two questions are unfit to present by phone.

Question 1: We made calculations on air quality in Helvoirt near the N65, a busy road between Den Bosch and Tilburg in the Netherlands. As you can see from [this letter](#) dated 25-7-2013 in the third paragraph, the Dutch government reproached us calculating within 10 meter from the kerbside, referring to a local system called NSL. In the view of the Dutch Ministry calculations should be made outside this 10 meter from the kerbside unless a facade is nearer by. But Annex III from the Directive states that *"for all pollutants, traffic-orientated sampling probes shall be at least 25 m from the edge of major junctions and no more than 10 m from the kerbside."* We are unable to convince the Dutch Ministry that the NSL should calculate inside this 10 meter from the kerbside. In our view, the Directive should prevail on distance to the kerbside. Exceptions of course for locations mentioned in paragraph A2 of Annex III where there is no need for assesment. Do you see any argument why the Directive should not prevail in this case?

Question 2: Paragraph A2 of Annex III where there is no need for assesment, mentions under (a) *"any locations situated within areas where members of the public do not have access and there is no fixed habitation;"* The Dutch government concludes from this underlined and in Paragraph A2 under (a) that these two requirements are independent of each other and introduced a so called 'blootstellingscriterium' translated as "exposure criterion". This means in effect that where *there is no fixed habitation* and no facade nearer by, ambient air quality need not be assessed. In our view this upsets the entire meaning of Annex III, limiting the need for assesments only to locations where there is no fixed habitation and no facade nearer by. Can you inform us about the meaning of this and in Paragraph A2 under (a) that almost everybody understands as meaning two joint requirements (*no access and no fixed habitation*). Is there any clue in the parliamentary discussion etc. on the meaning of this and ?

Thanks very much for your quick answers.

Kind Regards, Corneel Spil

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