

## Press release 10-9-2020

### ***How the two highest EU environmental authorities, European Commission and the European Environment Agency (EEA), violate cornerstones of EU environmental law.***

On 3 and 5 September 2020 two EU lawsuits came into their next phase. See

<http://www.n65.nl/Civiel/Civiele-Procedure.htm>

for all details of these two complaints on serious breaches of EU environmental law.

**1.** The complaint on 3 September is addressed to the European Court of Justice with two issues.

- The [EU Directive on Air Quality](#)<sup>1</sup> prescribes in Appendix III, par. C, to assess air quality within 10 meter from the kerbside on a micro level. In some countries however, among which the Netherlands, air quality along busy roads through densely populated areas is assessed far beyond that 10 meter from the kerbside. Appendix III prescribes in par. A that assessment should take place everywhere except where it does not make sense. Appendix III par. B prescribes to assess on a macro level where the pollution risk for populations are highest. From these rules it follows logically to assess air quality along busy roads through densely populated areas within 10 meter from the kerbside. Nevertheless the European Commission DG Environment, judges differently. Surprising because no close reading of the Directive allows for assessments far beyond this 10 meter from the kerbside. As a result, no action to prevent premature death from air pollution is taken as art. 24 of the Directive requires. The European Court of Justice is supposed to answer now on the question why the EU undermines this 10 meter issue as main cornerstone of the Directive.
- The [Aarhus Convention](#)<sup>2</sup> and [EU-Aarhus Regulation](#)<sup>3</sup> in art. 1 par. 1(d) grants access to justice in environmental matters at Community level under the conditions laid down by this Regulation. However, contrary to the Convention, the EU Regulation excludes in art. 2.2 “measures taken or omissions by a Community institution or body in its capacity as an administrative review body”. On top the European Commission DG Environment, interprets this exclusion very extensively, trying to systematically block access to the European Court of Justice. In this case for example it considers a request for clarification of Appendix III, paragraph C as an infringement proceeding. It is surprising that the European Commission undermines this way the very purpose of the Aarhus Convention and Regulation as access to justice is concerned. The EU Court of Justice is supposed to answer now on why this behaviour.

**2.** The complaint on 5 September is addressed to the European Environment Agency (EEA). Their statute requires the EEA “to ensure that the public is properly informed about the state of the environment” and to provide “objective, reliable and comparable information at European level enabling them to take the requisite measures to protect the environment, to assess the results of such measures and to ensure that the public is properly informed about the state of the environment”. And the EEA [technical guide](#)<sup>4</sup> in par. 3.5.1. states among others on page 19: “Assessment should occur at sites where the concentrations are highest, e.g. the kerbside or close to strong sources, as well as in areas representative of the exposure of the general public, i.e. the urban background.” Thus supporting the only possible interpretation of this 10 meter issue in Appendix III, par. C at busy roads through densely populated areas. And when in practice different countries interpret this 10 meter issue differently, it is impossible to properly inform the public about the state of the environment as to air pollution. Distance to the kerbside is the determining factor on a micro level.

It is surprising that the EEA violates their statutory obligations by refusing to ask the European Court of Justice the proper interpretation of this 10 meter issue as main cornerstone of the Directive when so requested in line with the Aarhus Convention and Regulation.

The reason for this remarkable behaviour of the EU Commission and the EEA could be related to the heavy parliamentary discussions about this 10 meter from the kerb side issue during 2005-2007.

<sup>1</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008L0050>

<sup>2</sup> [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=XXVII-13&chapter=27](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-13&chapter=27)

<sup>3</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32006R1367>

<sup>4</sup> <https://www.eea.europa.eu/publications/fairmode/download>