

Helvoirt, 5 September 2020

European Agency for the Environment
att. Mr. Hans Bruyninckx,
Kongens Nytorv 6
1050 Copenhagen K, Denmark

Regards: Request for internal review of your opinion 24 August 2020 ex art. 10 Aarhus convention

Dear Mr. Bruyninckx,

The opinion in your letter dated 24 August 2020 surprised us. We agree of course that interpreting the EU Air Quality Directive is a prerogative of the European Court of Justice. We also fully agree with your interpretation of the EU Air Quality Directive as given in your own technical guide: "[The application of models under the European Union's Air Quality Directive](#)"¹ regarding the need to assess within 10 meter from the kerbside as cornerstone of this Directive. And we provided proof that at least in the Netherlands assessments take place far over the prescribed maximum 10 meter from the kerbside. As a result it looks as if air quality limits are not overdrawn but in fact, when assessed within 10 meter from the kerbside, they are. The result is that no short-term action is taken as prescribed by art. 24 of the Directive.

As we showed you [here](#)² the European Commission accepts assessments far beyond the prescribed maximum 10 meter from the kerbside. It also shows that the European Commission tries to block a question to the European Court of Justice on this important issue. And the answer on that question implies either a blatant violation of the maximum 10 meter from the kerbside as cornerstone of the EU Air Quality Directive or no problem at all. And your answer surprised us because your refusal to raise a question European Court of Justice also blocks an answer from the European Court of Justice. This implies that both the European Commission and your Agency accept that the European Court of Justice is the highest authority on this matter but at the same time block getting answers from this highest authority. It also implies that at the highest official level in the EU large disagreements exist on this 10 meter issue as a cornerstone of the EU Air Quality Directive. That cannot be.

As argument for your refusal to raise this question to the European Court of Justice you mention that the EEA does not have the mandate or means to transfer complaints from external parties to the European Court of Justice. That is a serious mistake. The Aarhus Regulation itself gives you full mandate in art. 10 under the heading "Request for internal review of administrative act"³. And it is clear that your refusal to execute our request on 29 July 2020 is such an administrative act.

We hope you agree now and confirm us to raise these questions to the European Court of Justice asap. If not, please keep in mind that based on art. 12 of the Aarhus Regulation we may institute proceedings before the Court of Justice in accordance with the relevant provisions of the Treaty.

With kind regards,

Corneel Spil, Chairman Committee N65OH

¹ <https://www.eea.europa.eu/publications/fairmode/download>>>.

² [http://www.n65.nl/Civiel/EU-commissie-Chap\(2019\)2512-2.pdf](http://www.n65.nl/Civiel/EU-commissie-Chap(2019)2512-2.pdf)

³ 1. Any non-governmental organisation which meets the criteria set out in Article 11 is entitled to make a request for internal review to the Community institution or body that has adopted an administrative act under environmental law or, in case of an alleged administrative omission, should have adopted such an act.