

Right to Clean Air and Access to Justice: Who can go to Court?

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Series of webinars
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PART 1

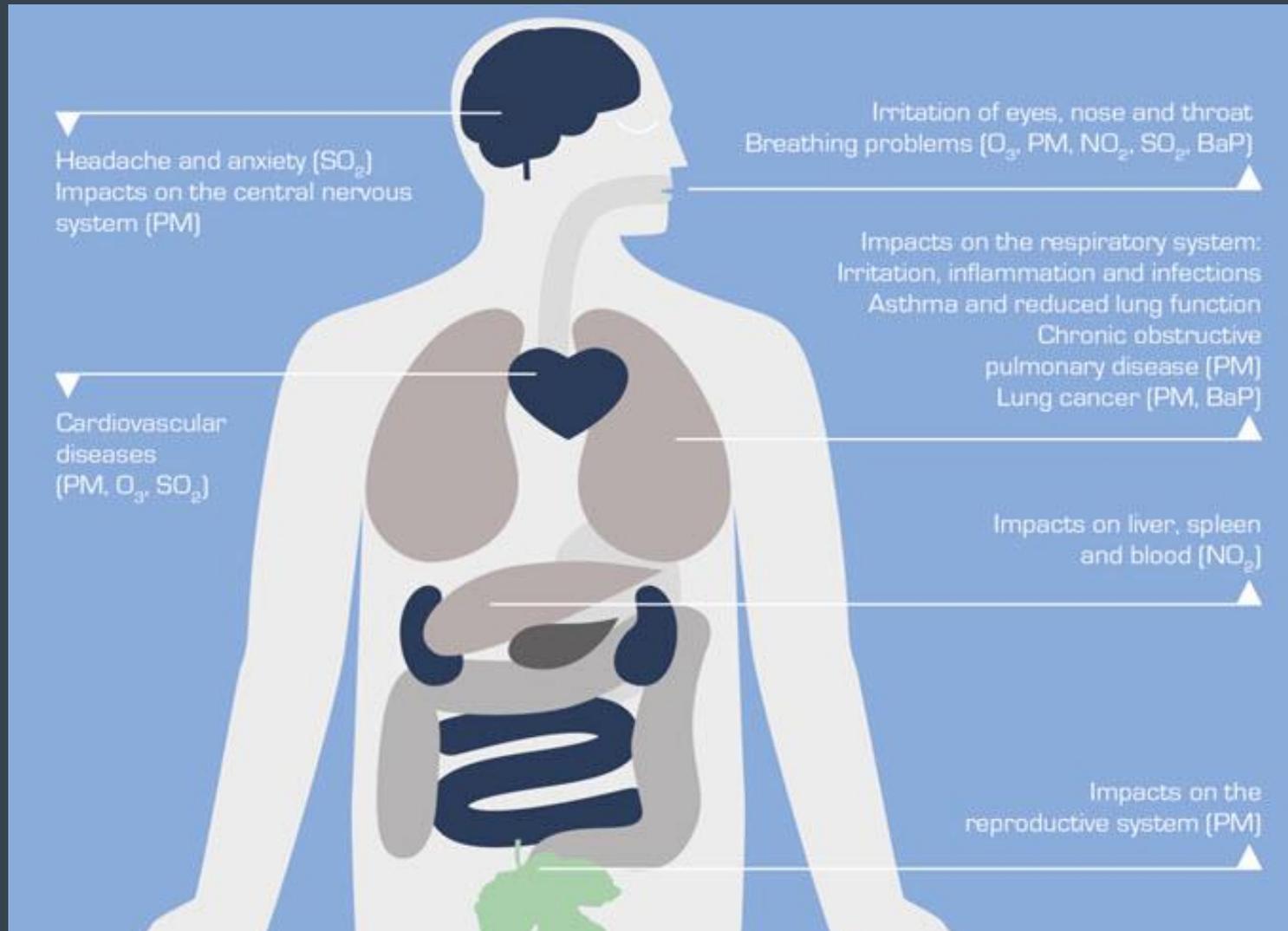
THE AIR QUALITY DIRECTIVE



“Air pollution is the world’s largest single environmental health risk” (WHO, 2014)



Impacts of air pollution on health



THE RIGHT TO CLEAN AIR

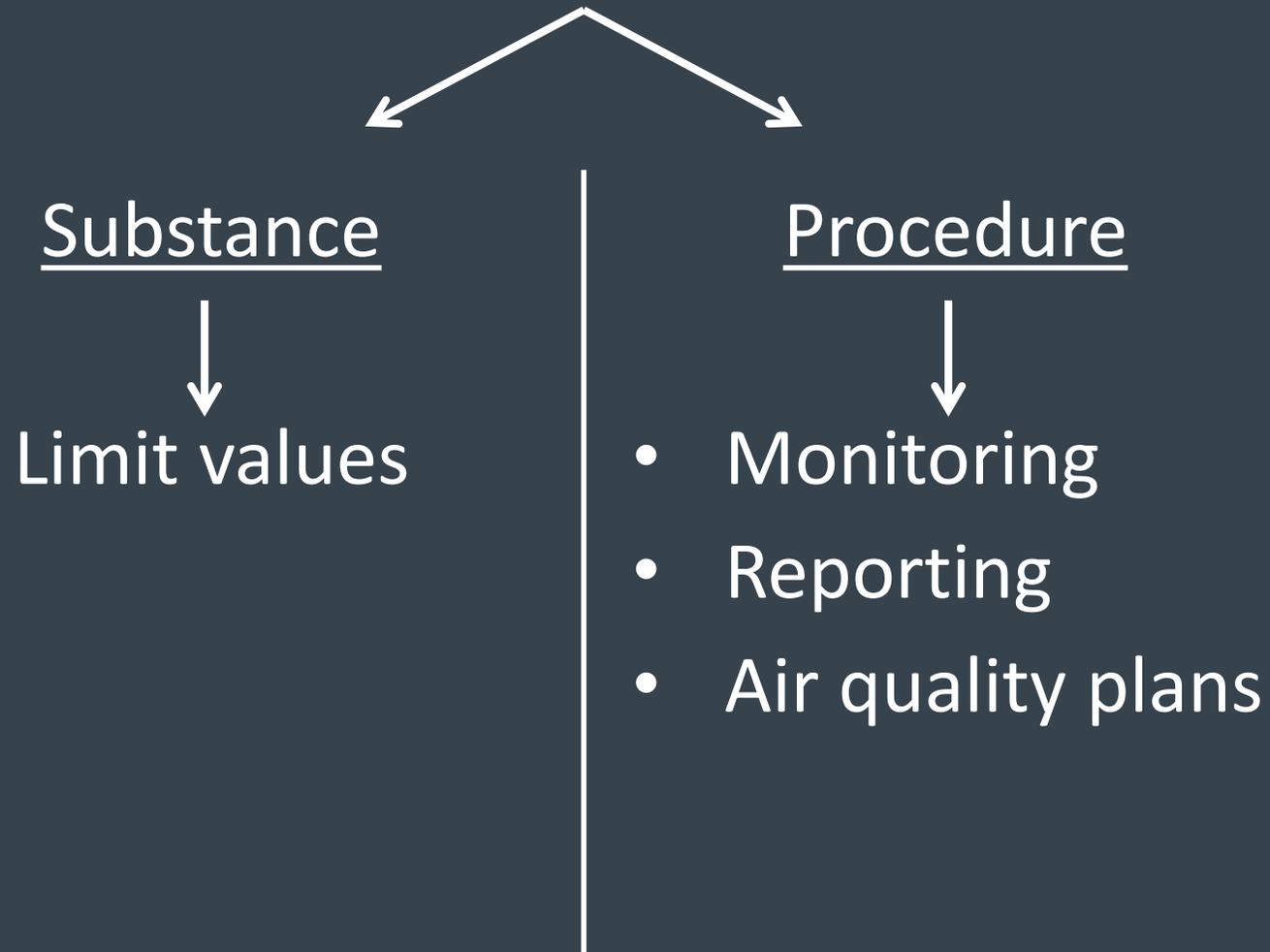
THE THEORY



Image: Chris Barbalis (Unsplash)



The Air Quality Directive 2008/50/EC



Limit values (Art. 13)

OBLIGATION OF RESULT: *“a level fixed on the basis of scientific knowledge, with the aim of avoiding, preventing or reducing harmful effects on human health and/or the environment as a whole, to be attained within a given period and not to be exceeded once attained.”*



Limit values

Pollutant	Obligation	Time period	Compliance deadline	Permitted annual exceedances
Nitrogen dioxide (NO₂)	Hourly limit value of 200 µg/m ³	1 hour	1/1/2010 (possible extension to latest 1/1/2015)	No more than 18
	Annual mean limit value of 40 µg/m ³	Calendar year	1/1/2010 (possible extension to latest 1/1/2015)	n/a
Coarse particulate matter (PM₁₀)	Daily limit value of 50 µg/m ³	24 hours	1/1/2005 (possible extension to 11/6/2011)	No more than 35
	Annual mean limit value of 40 µg/m ³	Calendar year	1/1/2005 (possible extension to 11/6/2011)	n/a
Fine particle (PM_{2.5})	Annual mean limit value of 25 µg/m ³	Calendar year	1/1/2015	n/a



Scientific knowledge and legal standards

Pollutant	WHO	EU
PM _{2.5}	10 µg/m ³ annual mean	25 µg/m ³ annual mean
PM ₁₀	20 µg/m ³ annual mean	40 µg/m ³ annual mean
NO ₂	40 µg/m ³ annual mean	40 µg/m ³ annual mean



Air quality plans (art. 23)

OBLIGATION OF RESULT: *“In the event of exceedances of those limit values for which the attainment deadline is already expired, the air quality plans shall set out appropriate measures, so that the exceedance period can be kept as short as possible.”*



Air quality monitoring

- Assessment regime: fixed monitoring stations, modelling, indicative measurements and objective estimation
- Minimum number of stations: based on pollution levels and size of population exposed (Annex V)
- Location of monitoring stations: areas where the highest concentrations occur (Annex III)



THE CLEAN AIR HANDBOOK

A practical guide to EU air quality law
(VERSION 2.0)

By Alan Andrews
November 2015

The Project Clean Air is co-financed by LIFE,
the EU's instrument supporting environmental projects



documents.clientearth.org/download/6758



THE RIGHT TO CLEAN AIR

THE REALITY



EEA Air Quality Index



European Air Quality Index

2020-01-25 12:00 UTC+1



Country

Stations

3 hours ago

Navigation arrows: left, right, refresh

[About the European Air Quality Index](#)

- Good
- Fair
- Moderate
- Poor
- Very poor
- Extremely poor
- No data

[Legend explained](#)

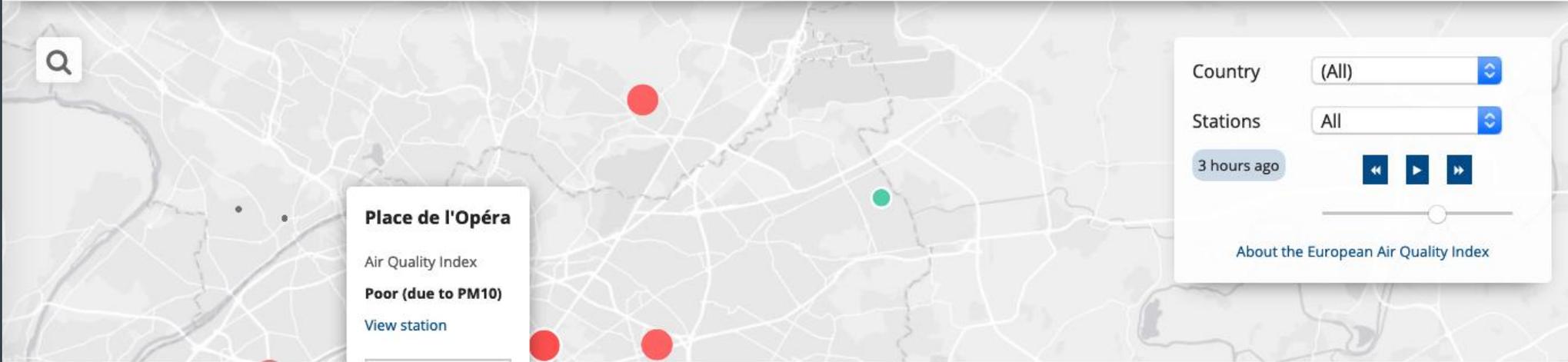


EEA Air Quality Index



European Air Quality Index

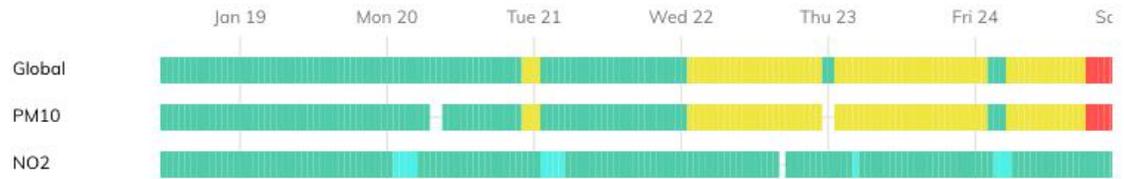
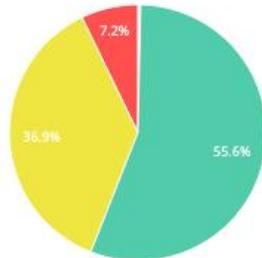
2020-01-25 12:00 UTC+1



Place de l'Opéra (FR04118)

Air Quality Index Poor (due to PM10)
Date 2020-01-25 12:00 UTC+1
Country France
Location Paris
Classification Traffic
Area Urban

Accumulated past 365 days



Good Fair Moderate Poor Very poor Extremely poor

General population

Consider reducing intense activities outdoors, if you experience symptoms such as sore eyes, a cough or sore throat.

Sensitive population

Consider reducing physical activities

[Country fact sheet France](#) [Organization website](#)

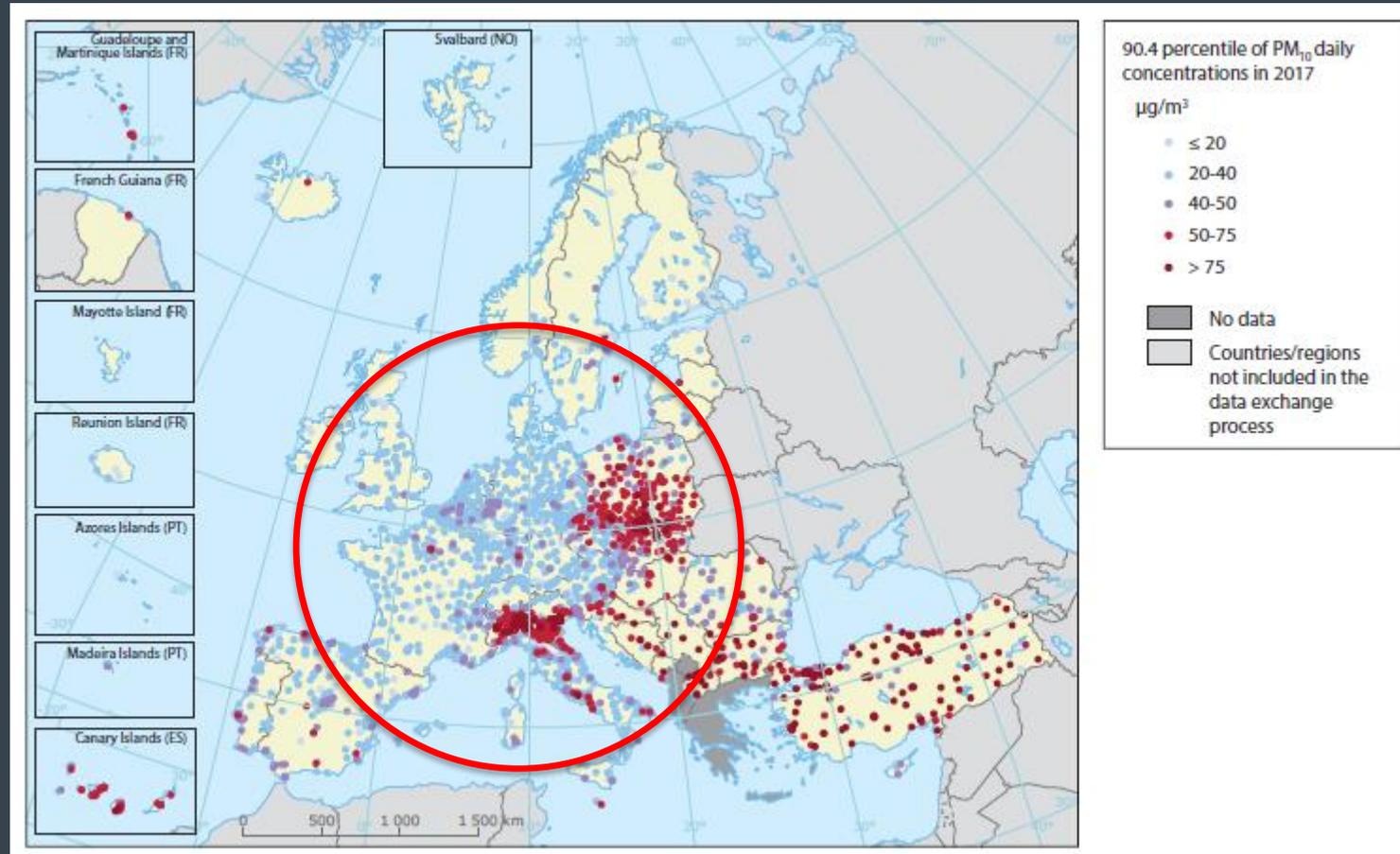


Air quality in Europe — 2019 report

ISSN 1977-8449



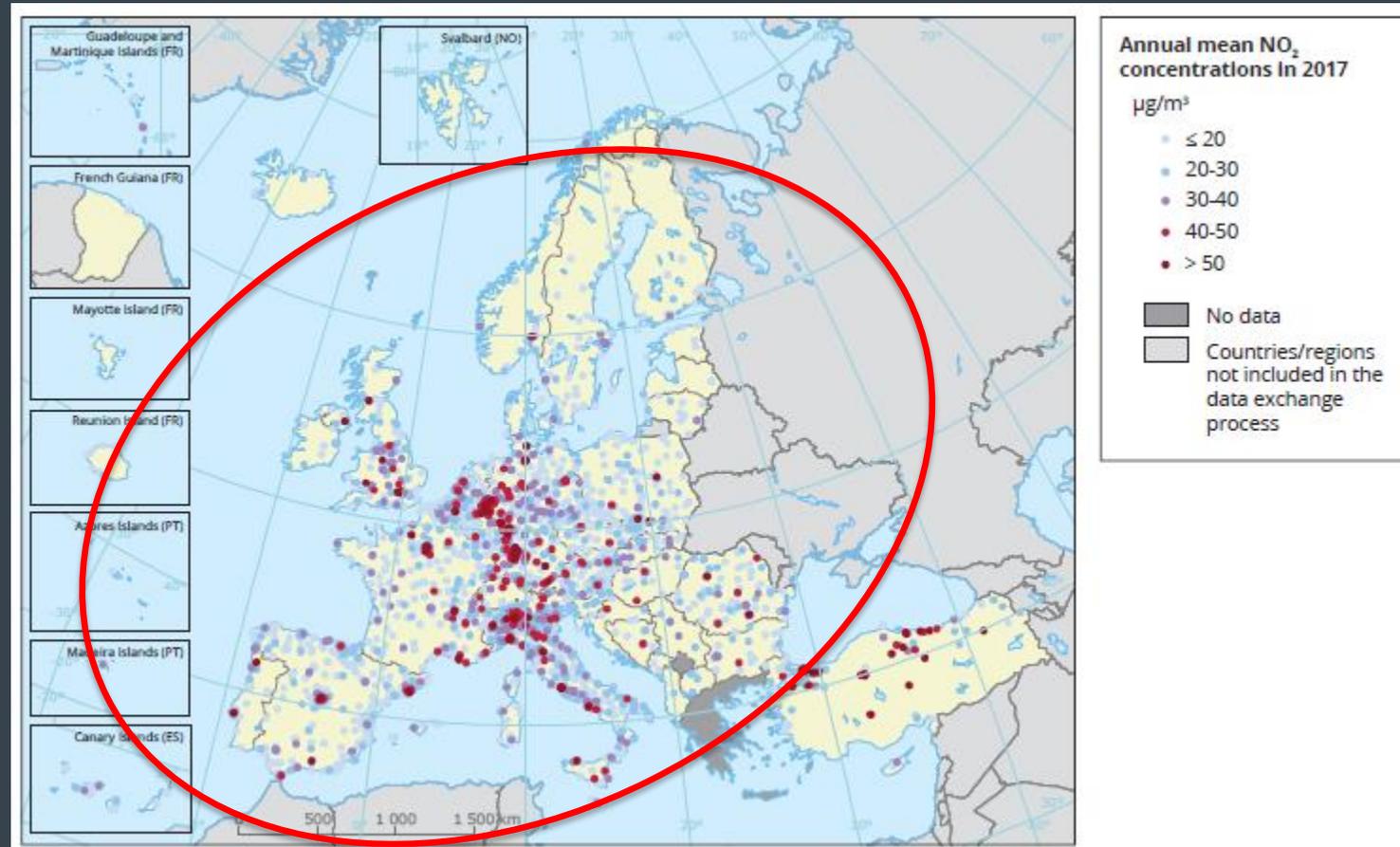
Concentrations of PM₁₀ in 2017



Concentrations of PM_{2.5} in 2017



Concentrations of NO₂ in 2017



Health impacts in Europe

Table 10.1 Premature deaths attributable to PM_{2.5}, NO₂ and O₃ exposure in 41 European countries and the EU-28, 2016

Country	Population (1 000)	PM _{2.5}		NO ₂		O ₃	
		Annual mean (µg/m ³)	Premature deaths (€)	Annual mean (µg/m ³)	Premature deaths (€)	SDMO35 (€)	Premature deaths (€)
Austria	8 700	12.0	5 300	18.9	1 000	4 522	270
Belgium	11 311	12.7	7 600	21.7	1 600	2 203	180
Bulgaria	7 154	22.3	13 100	18.8	1 100	3 347	280
Croatia	4 191	19.4	5 300	15.2	260	4 996	280
Cyprus	1 184	13.7	580	24.0	240	5 612	30
Czechia	10 554	16.6	9 600	15.2	240	4 353	280
Denmark	5 707	9.2	2 700	10.4	500	3 998	180
Estonia	1 316	5.9	500	7.8	110	2 111	100
Finland	5 487	5.1	1 500	8.0	200	3 998	180
France	64 977	10.9	22 200	20.7	1 500	2 203	180
Germany	82 176	11.1	39 500	11.7	1 400	2 456	200
Greece	10 784	19.6	11 100	12.0	60	3 952	380
Hungary	10 030	11.1	2 100	14.9	50	1 323	70
Ireland	4 588	11.1	2 100	14.9	50	1 323	70
Italy	60 702	11.1	2 100	14.9	50	1 323	70
Latvia	1 329	11.1	2 100	14.9	50	1 323	70
Lithuania	3 085	11.1	2 100	14.9	50	1 323	70
Malta	442	11.1	2 100	14.9	50	1 323	70
Netherlands	16 979	11.3	2 100	14.9	50	1 323	70
Poland	37 967	20.4	43 100	20.0	7 700	5 212	1 500
Romania	21 781	8.3	2 100	14.9	50	1 323	70
Slovakia	5 454	11.1	2 100	14.9	50	1 323	70
Slovenia	2 063	11.1	2 100	14.9	50	1 323	70
Spain	45 854	11.1	2 100	14.9	50	1 323	70
Sweden	9 594	11.1	2 100	14.9	50	1 323	70
Switzerland	8 327	10.1	3 700	19.7	620	4 842	240
United Kingdom	61 398	11.1	2 100	14.9	50	1 323	70
EU-28	506 028	12.9	374 000	16.3	68 000	3 547	14 000
Total	538 014	14.4	412 000	16.3	71 000	3 811	15 100

Estimated 374,000 premature deaths each year in the EU from exposure to PM_{2.5}

Estimated 68,000 premature deaths each year in the EU from exposure to NO₂



Right to clean air and access to justice



- No express provision on access to justice in the Air Quality Directive
- Article 9(3) of the Aarhus Convention
- A2J at national level: *“diverging, random and inconsistent”* (Därpo report)





PART 2

CASE LAW OF THE CJEU



The beginnings: Case C-59/89 *Commission v Germany* (see also Cases C-361/88 and C-58/89)

- Germany's failure to transpose limit values into national law
- CJEU ruling:
 - Limit values imposed specifically to **protect human health**
 - whenever the exceeding of the limit values could endanger human health the **persons concerned** must be in a position to rely on mandatory rules in order to be able to **assert their rights** and, where appropriate, rely on them **before the national courts**



The *Janecek* case

- Breaches of PM₁₀ limit value in Munich
- Dieter Janecek demanded a short-term action plan under Directive 1996/62/EC

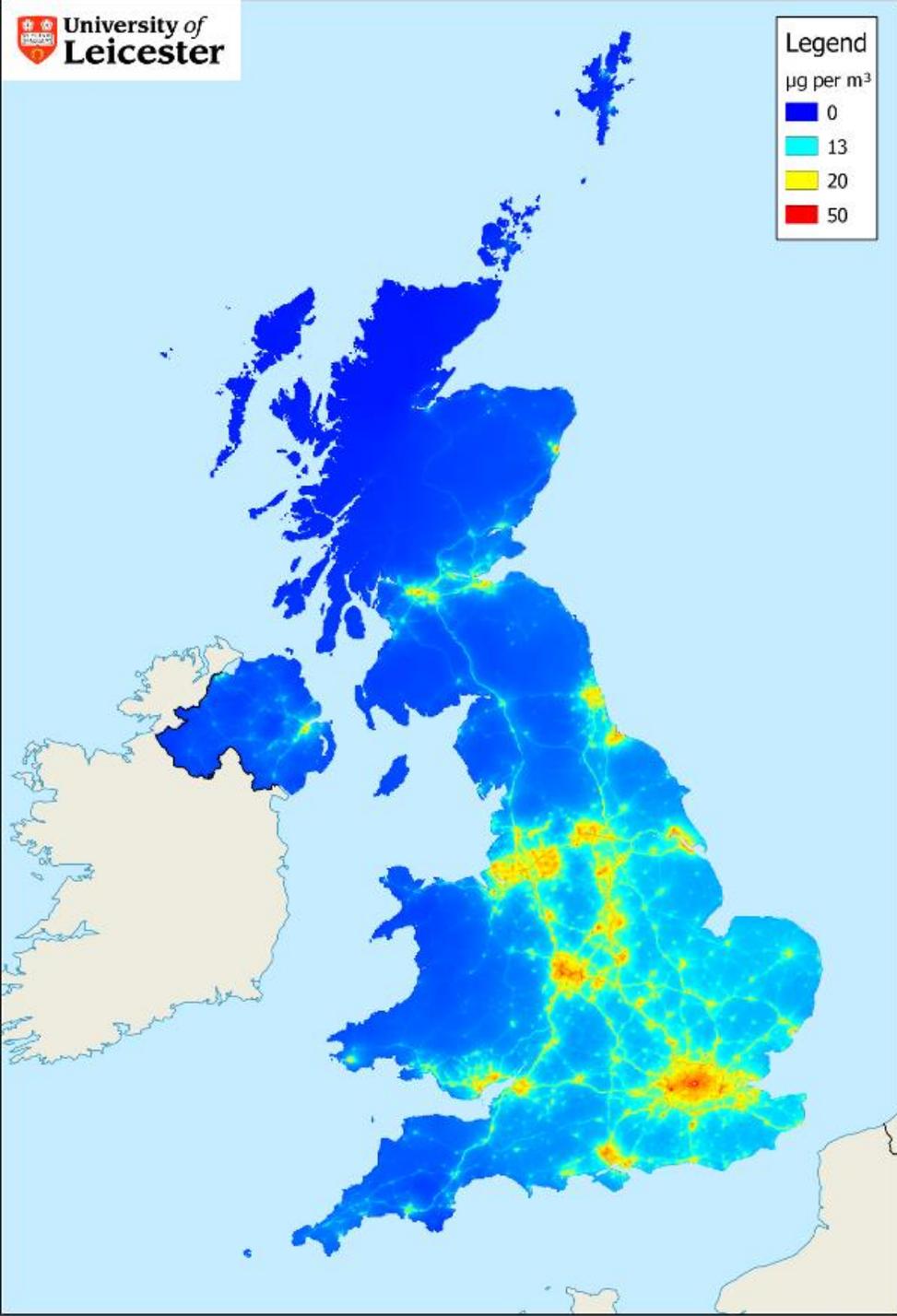




Case C-237-07 Janecek v Freistaat Bayern:

“Where there is a risk that limit values may be exceeded, persons directly concerned can require the competent authorities to draw up an action plan.”





ClientEarth v United Kingdom

- Breaches of NO₂ limit value in 40 out of 43 zones on 1 January 2010
- 16 air quality plans would not achieve compliance until after 2015
- London projected to exceed limit values in 2028 (ie 18 years after deadline)
- ClientEarth demanded new plans which would achieve compliance ASAP and, at the latest, by 2015



The High Court, 2011

- Government in breach of Directive
- BUT
- Serious political and economic questions
 - Enforcement is a task for the European Commission, not national judges



Mr Justice Mitting



Case C-404/13 – ClientEarth v UK
(SoSEFRA):

*“the **natural** or **legal persons** directly concerned by the limit values being exceeded after 1 January 2010 must be in a position to require the competent authorities, if necessary by bringing an **action before the courts** having jurisdiction, to establish an **air quality plan which complies with the second subparagraph of Article 23(1) of Directive 2008/50**” (para. 56)*



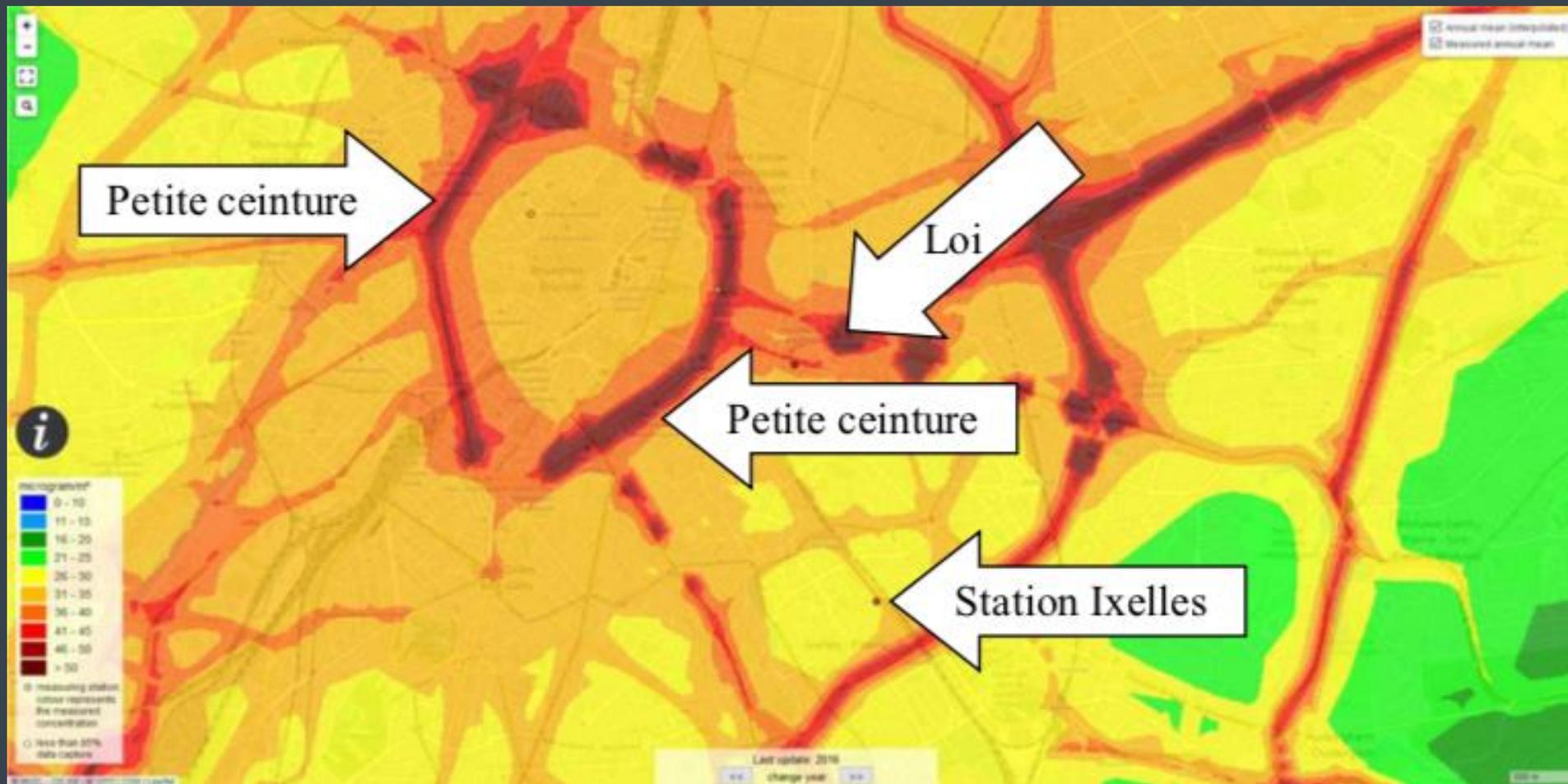
Brussels: Failure to monitor air quality



Image: Emmanuel Raza (flickr)



NO₂ concentrations in Brussels



Source: IRCEL-CELINE



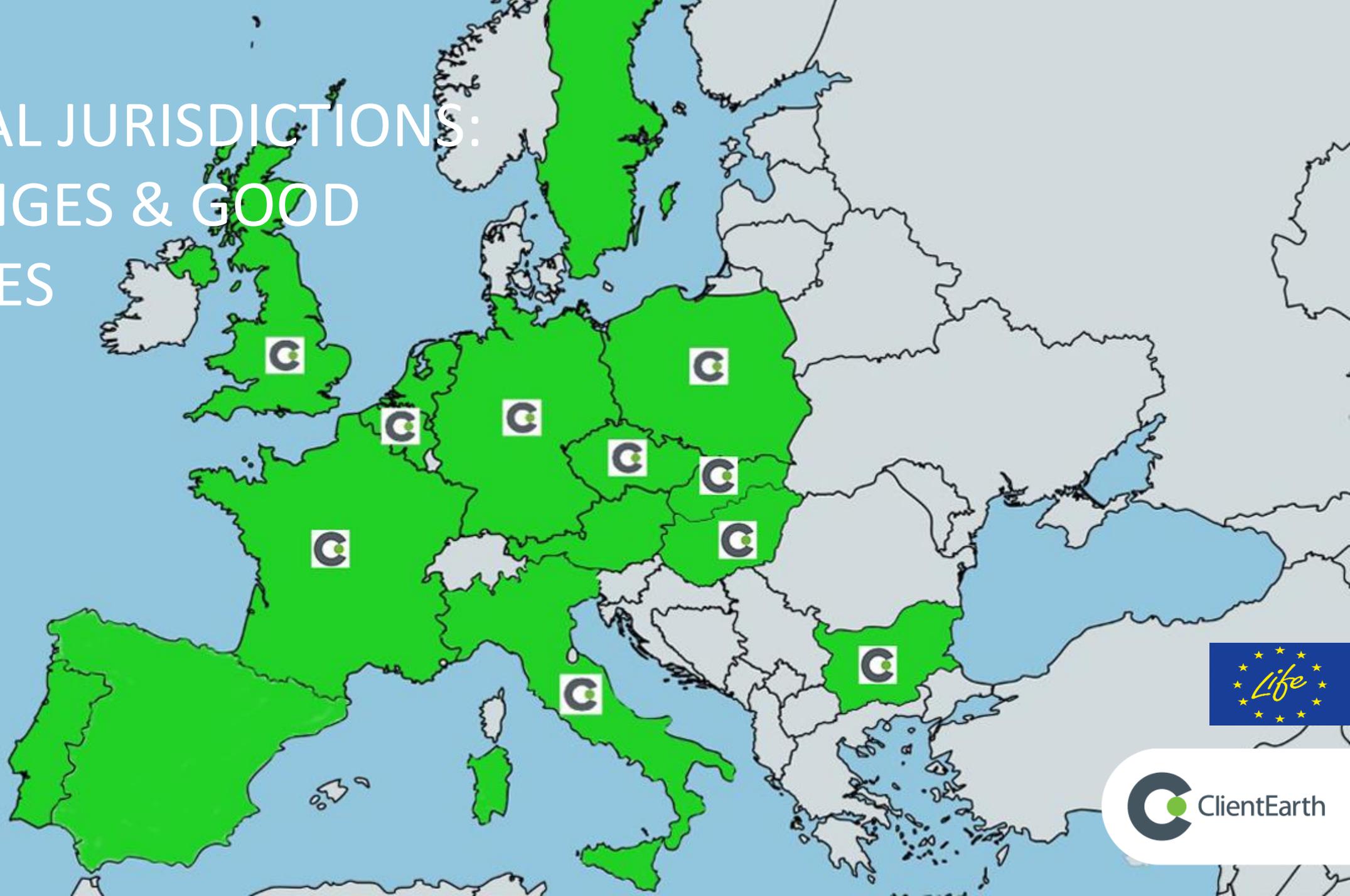
Case C-723/17 – Craeynest v Region de Bruxelles:

AQD rules on the location of monitoring stations contain “*clear, precise and unconditional obligations, which means that they can be invoked by individuals against the State*” (para. 42)



PART 3

NATIONAL JURISDICTIONS: CHALLENGES & GOOD PRACTICES



POLAND

- Some of the worst air quality in the world
- Some of the most ineffective air quality programs
- Updated every 3 years without satisfying effects



Challenging Air Quality Plans in Poland

- AQPs in Poland are local laws, not decisions – no easy route to challenge them
- An individual, concrete and actual legal interest must be demonstrated
- A violation of the legal interest must be demonstrated



- In June 2017, A Polish Citizen and ClientEarth challenged the AQP for Silesia
 - Allegations:
 - Lack of adequate measures
 - Improper transposition of art. 23 of the Clean Air Directive („shortest possible time”)
 - Vague duties and obligations of public authorities
- As concerns the legal interest:
 - The individual stated that they:
 - have lived in the are for 30 years
 - successive AQPs have not solved the air pollution problem
 - The measures in the new AQP will not solve the problem
 - NGOs by their nature do not have a legal interest that can be violated by an AQP (with some exceptions)



ClientEarth:

- relied on CJEU judgments;
- argued that a broad, EU-favorable reading of the Polish provisions should be adopted
- petitioned for a preliminary ruling by the CJEU



On 23 January 2018, The Supreme Administrative Court (judgment no. II OSK 3218/17) denied the individual and CE standing, ruling that the AQP:

- is addressed only to the authorities;
- imposes no burden or obligations on the individual;
- The content of the AQP itself is not evidence of a violation of a legal interest.

In short: the AQP does not violate the legal interest of the individual;
The individual does not have standing to challenge an AQP.

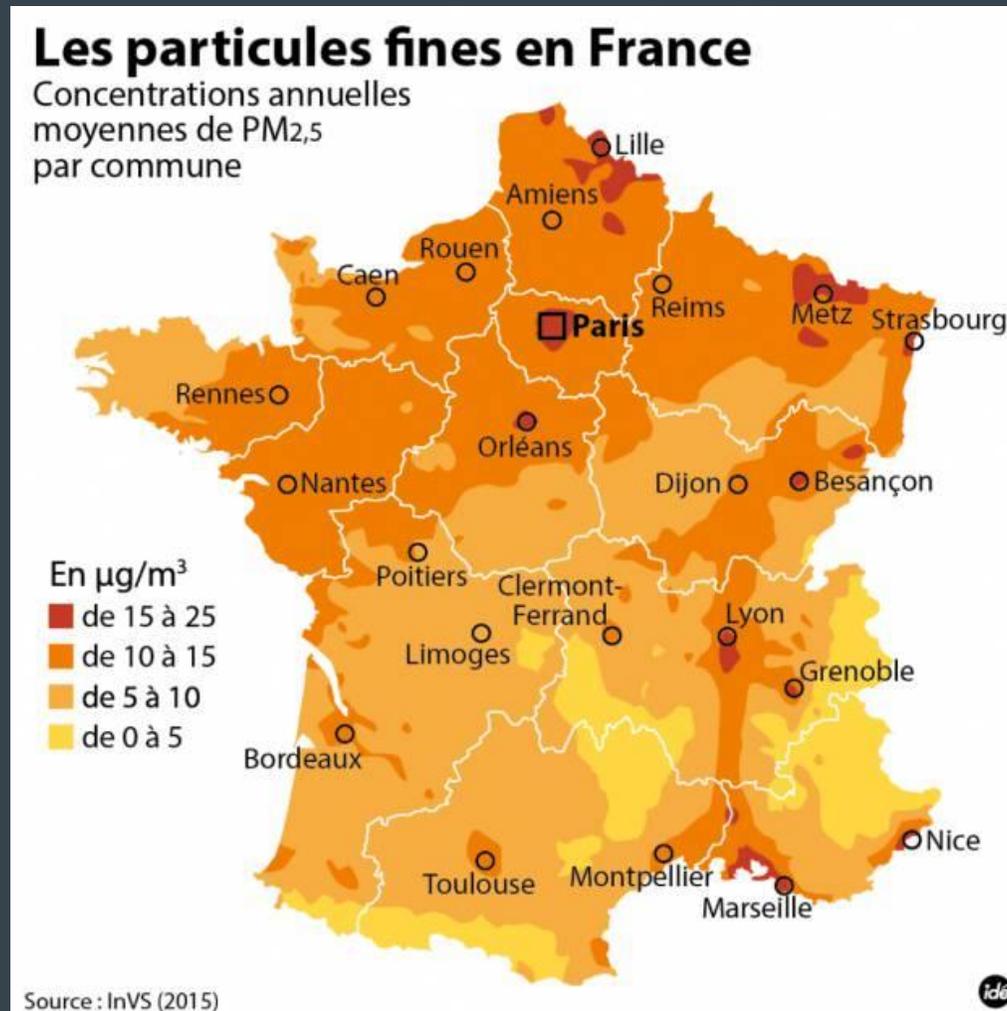


But! Hope in other areas:

- the civil law: cases concerning smog and compensation – individual plaintiffs have standing (new case-law)
- administrative instruments other than AQPs: solid-fuel bans, local fees



OVERCOMING BARRIERS TO THE RIGHT TO CLEAN AIR IN FRANCE



FIRST ATTEMPT: refusal of access to justice

- In May 2010, Les Amis de la Terre challenged the air quality plan for Paris
- Both the Administrative Court and Conseil d'Etat (judgment N° 369428 of 10 June 2015) rejected the action holding that:
 - air quality plans are **just one among several tools** available to public authorities to improve air quality
 - competent authorities have **wide discretion** when selecting measures
 - the adoption and implementation of air quality plans is only an **obligation of means**, not an obligation of result



SECOND ATTEMPT: effective judicial protection

- In October 2015, Les Amis de la Terre started a new action against the French government for failure to comply with the limit values in 16 zones and agglomerations
- On 11 July 2017, the Conseil d'Etat (judgment N° 394254), departed sharply from its previous decision and followed the case law of the CJEU (namely, the *ClientEarth* case), holding that:
 - Air Quality Directive sets an **obligation of results**
 - **discretion** of competent authorities over the content of air quality plans is **limited** and subject to judicial review
 - ordered adoption of new air quality plans by 31 March 2018



Conclusions

- Clear and binding EU rules on air quality, but widespread breaches many years after entry into force
- CJEU case-law is helping individuals and NGOs to protect their right to clean air before national courts
- Barriers and challenges remain in various national jurisdictions



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Questions?



Next webinar of the series:

« *Right to Clean Air and Access to Justice* »

Session 2: “Right to Clean Air and Access to Justice: procedural and substantial review by the judge.”

12 February, 12:30pm GMT+1

Register here: <https://meeting.zoho.eu/meeting/register?sessionId=1258245920>

Session 3: “Right to Clean Air and Access to Justice: How can the judgments by enforced?”

26 February, 12:30pm GMT+1

Register here: <https://meeting.zoho.eu/meeting/register?sessionId=1293302906>



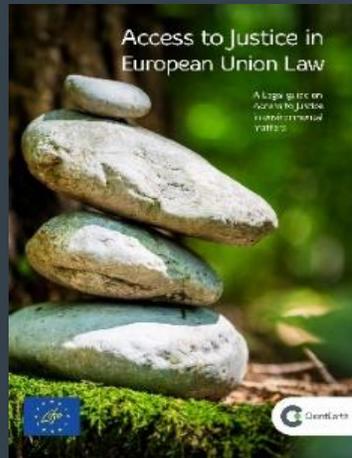
Thank you!

To know more about our LIFE project on Access to Justice EARL A2J and our next trainings, visit our website:

<https://www.clientearth.org/access-justice-greener-europe/>

And sign up for updates on Access to Justice :

https://www.action.clientearth.org/access-justice-newsletter?_ga=2.201027438.1583032739.1578912944-2129994527.1571747365&_gac=1.195725022.1576580999.CjwKCAiAluLvBRASEIwAAbX3GVAcq2bcPVj6Z129pwjoaBzxsN66dargggcDHZlQFcSulE2Ph-Rq8RoC2usQAvD_BwE



Have a look at our legal publications :

* Guide on access to justice in environmental matters at EU level:

<https://www.documents.clientearth.org/library/download-info/16209/>

* Country-specific legal toolkits on access to justice at national level:

<https://www.clientearth.org/country-toolkits-on-access-to-justice/>

