



Air Quality Infringements

**(A few guidelines : the
Portuguese case study)**

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The interpretation of the AQ Directive (2008/50/EC) Relation between Articles 13 and 23(1)

- *Article 13(1): MS are required to ensure that pollutants do not exceed Limit Values (LV) (and not simply required to improve AQ) = LV are mandatory: since 2005 for PM10 and since 2010 for NO2*
- *Article 23(1): When the LV are exceeded, MS are required to establish plans and set out appropriate measures so that the exceedance period can be kept as short as possible*
- *The plans shall meet certain requirements (at least the information listed in Annex XV part A)*

The interpretation of the AQ Directive

Main principles to be drawn

- The Directive is aimed at protecting not only environment but also human health (Art 1)
- The obligation to comply with the LV under Art 13 is **independent** of the obligation of drawing plans under Art 23(1)
- Art 23 (1) only applies when LV are exceeded
- Therefore the obligation of drawing up plans **is subsidiary** to the one regarding achieving compliance with the LV
- Art 23(1) can only be breached when Art 13 is not complied with
- However, if the LV are exceeded, Art 13 is breached even if the measures are in theory adequate to allow compliance within a short timeframe (C-404/13 (point 49))
- It follows that the core obligation is to respect the LV

The interpretation of the AQ Directive

The concept of "as short as possible"

- *In case C-404/13 the Court highlights the importance of the notion of "as short as possible" and considers that it prevails over the margin of discretion of the MS (point 57)*
- *The Court highlights as well the health protection challenges (points 41, 55)*
- *Directive 99/30/EC already introduced margins of tolerance decreasing every year until they would reached zero on the attainment deadlines (2005 (PM10); 2010 (NO2))*
- *The AQ Directive (Article 22) included the possibility for Member States to obtain time extensions*
- *Practical or economic grounds can not prevail over compliance with the LV (C-68/11, COM/Italy, points 59 and 60)*
- **Conclusion:** *Article 23(1) requires measures to be put in place as a matter of **emergency**, in particular when several years of exceedances have been recorded (because of the consequences to human health and because the MS had already enough time to achieve compliance with the LV)*

The assessment of the plans and measures

- *Formal requirements Annex XV part A : absence of one or more elements of information required (e.g. timetables for implementation and compliance) is a strong indication of insufficiency of the plan*
- *Old measures/New measures?*
- *Only decided or already implemented?*
- *Addressing the specific sources of pollution?*
- *Effectiveness: binding or just voluntary?*
- *Proportionality: the longer, the stronger*

The situation in Portugal

Zones where PM10 exceedances have been recorded

"No*" means that the LV were not exceeded following deduction of natural contributions

Zone name	2013		2012		2011		2010		2009		2008		2007		2006		2005	
	DLV	ALV	DL V	AL V	DL V	AL V	DL V	ALV	DLV	AL V	DLV	ALV	DLV	ALV	DL V	ALV	DLV	AL V
PT1004 Porto Litoral	Yes	No	Yes	No	Yes	Yes	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
PT2001 Aveiro/Ílhavo	No	No	Yes	No	Yes	No*	No	No	Yes	No	Yes	No	Yes	No	No	No	Yes	No
PT2001 Coimbra	No	No	No	No	No*	No	No*	No										
PT2003 ZI Estarreja	No	No	Yes	No	Yes	No	No	No	No*	No	Yes	No	Yes	No	Yes	No	Yes	Yes
PT3001 AM Lisboa Norte	No	No	Yes	No	Yes	Yes	Yes	No*	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
PT3002 AM Lisboa Sul	No	No	No	No	Yes	No	No	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No

The situation in Portugal

Zones where NO₂ exceedances have been recorded

* Zone under the time extension

Zone name	2013		2012		2011		2010	
	HLV	ALV	HLV	ALV	HLV	ALV	HLV	ALV
PT-3001 Lisboa Norte	*	Yes	*	Yes	*	Yes	*	Yes
PT-1004 Porto Litoral	No	No	No	Yes	No	Yes	No	Yes
PT-1009 Braga (previously designated as PT-1001 Braga)	No	Yes	No	No	No	No	No	Yes



The situation in Portugal

The measures

The measures reported to the COM by Portugal :

- The **Air-Quality Plan for the Lisbon and Tagus Valley region (PMQA-LVT)**, approved under Order n°715/2008, of 6 August **2008**, and the related **implementing programme**, approved under Order n° 20763/2009, of 16 September **2009**
- The **Air-Quality Plan for the North Region (PMQA-RN)**, namely covering the agglomeration of **Porto Litoral**, approved under Order n° 716/2008, of 6 August **2008**, and the corresponding **implementing programme** , approved under Order n° 20762/2009, of 16 September **2009**
- The **Air-Quality Plan for Central Region**, which covers **Coimbra, Aveiro/Ílhavo and ZI Estarreja**, approved under the Order n° 408/2014, of 3 June **2014**
- The **Air-Quality Plan for Braga** agglomeration, approved under Order n° 407/2014, of 3 June **2014**
- The **Air-Quality Plan** specifically aimed at tackling the **NO2 on the North Region**, namely covering the agglomerations of **Porto Litoral and Braga**, adopted in 2014 by the Order n°406/2014, of 3 June **2014**

The situation in Portugal

Few comments on the NO2 measures

- AQ plans and programmes of the Lisbon and the North Region include schedules for their implementation, but **don't indicate any deadline or give any estimate as to the potential impacts of the listed measures in terms of bringing compliance with the LV**. Moreover, the plans have **expired in 2012**
- As for Lisbon, much of the measures targeting traffic **are not binding** such as information campaigns to improve environmental awareness; promotion of use of public transport and car-pooling; or promotion of "soft" forms of mobility
- The implementation of **LEZ** is foreseen by the AQ programme in Lisbon. However so far **only standards Euro 2 and 3** are imposed (At EU level, **Euro 6** is already being addressed)
- The NO2 specific plan for the North Region, adopted in June 2014, does not include any new measures and merely makes the **diagnosis of the situation as it was in 2010**. Moreover, it doesn't set any **deadlines or provide estimates** as to the impacts of the measures. In any case, it recognizes the need to **implement further measures**

NGOs action

- The **direct effect** of the Directive (in particular as for the right of asking the drawing up of plans when LV are exceeded) has been confirmed by the Court (C-404/13 (point 56))
- On the judgement of 29 April 2015, the UK Supreme Court made a **mandatory order** requiring the UK Government to prepare new AQ plans under Art. 23(1) of AQ Directive (which means that they have to be effective), in accordance with a defined timetable, not later than 31 December 2015.
- **Access to justice:** the standing for NGOs in **Portugal** is among the more favourable in EU (same level as Baltic countries, Greece, Ireland, France, The Netherlands, Romania and Spain); however justice is slow and not effective. The MS where the conditions are worse in terms of standing and costs is the **UK**.

State of play of the COM actions

PM10: **17** open infringement cases (AT, BE, BG, CZ, DE, EL, ES, FR, HU, IT, LV, PL, PT, RO, SK, SI, SE). Among them, 14 have reached the Reasoned Opinion stage, last phase before the going to Court. Further steps being discussed.

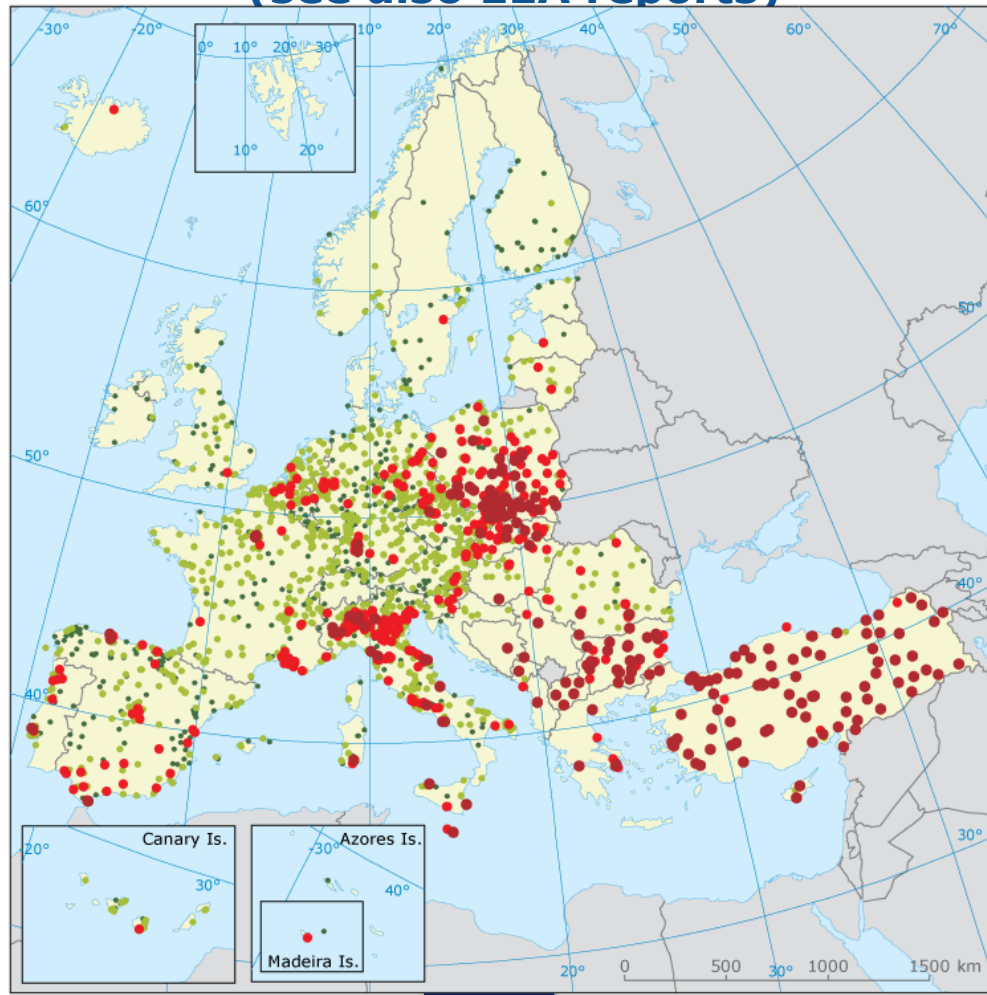
NO2: **17** open ongoing investigations (one already at infringements stage = LFN stage). All the responses assessed. Further steps (launching of infringement cases), following UK preliminary ruling, being discussed.

Non-conformity of the national measures of transposition of the AQ Directive: ongoing investigations involving **25** Member States



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Maps Pollution by PM10 (see also EEA reports)





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Maps

Pollution by NO₂

(see also EEA reports)

