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### **III. Enforcement of the Current EU Air Quality Directive**

The European Union has dramatically improved air quality over the last decade using its current legislative tools.<sup>66</sup>

70% since 1990.<sup>67</sup> This legislation toolkit includes two Directives, Directive 2004/107/EC and 2008/50/EC that set out EU air quality standards that establish concentration limits for the air pollutants most harmful to human health and cannot be surpassed in the EU.<sup>68</sup> In partner with these directives, the European Commission published the EU Clean Air Policy Package in 2013 to reduce the negative effects poor air quality has on human health by establishing new EU national emission ceilings for specific air pollutants for 2030.<sup>69</sup> Lastly, the EU has passed legislation for specific industries such as the Industrial Emissions Directive.<sup>70</sup> This paper will focus on Directive

states who fail to follow the value limits for the pollutants laid out in 2008/50/EC.

As mentioned earlier, Directive 2008/50/EC (the Directive) was enacted in 2008 to reduce air pollution levels to improve human health amongst its member states.<sup>71</sup> To enact this objective, the



specific period.<sup>78</sup> Next, the Commission will decide if the member state failed to live up to its obligations under the Directive and will call on the member state to comply with the EU law in a specific timeframe.<sup>79</sup> If the Commission still finds that the member state has still not complied with the Directive, the Commission can refer the concerned member state to the Court of Justice of the European Union (CJEU).<sup>80</sup> The CJEU uses its interpretation powers to ensure EU law is utilized the same way throughout Europe and presides over infringement proceedings when a member state does not comply with EU legislation.<sup>81</sup> The CJEU has had to use this enforcement power multiple times against member states who continue to exceed the emission ceilings laid out in EU legislation.

A. Examples: Spain, Germany and France

Although the Commission has taken multiple member states to court over their exceedance of air quality standards, they have not yet imposed financial penalties.<sup>82</sup> For example, the European Commission alleged that Baix Llobregat, Barcelona, and Madrid, Spain had exceeded the

surpassed the hourly limit for nitrogen dioxide in Stuttgart and Rhine-Main.<sup>89</sup> Furthermore, Germany failed to satisfy its obligations under the Directive because it did not assume a method possible.<sup>90</sup> Similar to Spain, the CJEU ordered Germany to pay its legal costs and the Commissions. After the CJEU released its judgment, the Court ordered Germany to comply with the Directive without delay.<sup>91</sup> The Commission has not brought an action for financial penalties. Similar to both Spain and Germany, the Commission also brought infringement proceedings against France for failing to follow the nitrogen dioxide limits in 2008/50/EC.<sup>92</sup> In 2019, the CJEU

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effective measures to ensure that the exceedance period of nitrogen dioxide limit values would be  
<sup>93</sup> One year after the CJEU ruling, the Commission decided to again refer France to the CJEU for violating the particulate matter limits.<sup>94</sup> So far, the court has not charged

law.<sup>100</sup>

dioxide levels (NO<sub>2</sub>) and microparticles (PM<sub>10</sub>) in the ambient air do not exceed the uniformly  
<sup>101</sup> He seeks twenty one million euros in

effects.<sup>102</sup>

In order to resolve this claim, the Administrative Court of Appeal of Versailles has requested the health damage resulting from exceeding the concentration limit values for NO<sub>2</sub> and PM<sub>10</sub> set by  
<sup>103</sup>

from the directives in question are not intended to confer individual rights on individuals likely to  
<sup>104</sup> To support this decision, the court considered what elements a law must include for compensation to be due to an individual when a member state fails to meet its obligations under an EU law:

- (1) the rule of law infringed must be intended to confer rights on individuals;
- (2) the breach must be sufficiently serious, it being specified that this is the case if the breach has persisted despite a judgment by the CJEU finding the infringement in question to be established;
- (3) there must be a direct causal link between the breach of the obligation resting on the state and the damage sustained by the injured parties.<sup>105</sup>

The Directive at issue cannot meet the first element because the obligations described in responsibilities to protect the environment and human health, and does not confer rights onto individuals.<sup>106</sup>

those [Articles] . . . that individuals . . . are . . . implicitly granted . . . rights the breach of  
amage

<sup>107</sup> Thus, Directive 2008/50/EC does not allow an individual to receive damages for a countries breach of EU law.<sup>108</sup>

But the CJEU does note that worried citizens still have alternative actions they can perform if they  
<sup>109</sup> The CJEU

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<sup>100</sup> Nicholas Camut, *Citizens Cannot Sue States for Health Damages Due to Air Pollution, EU Top Court Rules*, POLITICO (Dec. 22, 2022), <https://www.politico.eu/article/air-pollution-health-damages-european-union-court-rules/> <https://perma.cc/4Q8G-8EVH>].

<sup>101</sup> Court of Justice of the European Union Press Release no. 211/22, Les directives européennes fixant des normes

relies on a prior case where it held that a concerned citizen could bring a suit to their state to comply with Article twenty three regarding the air quality plan.<sup>110</sup> Thus, in this instance, the Parisian individual can bring a suit to a Court in France requesting the State follow Article twenty three of the Directive, but he cannot request a monetary damage for his alleged injury.<sup>111</sup> In addition, the CJEU approved the

<sup>112</sup> But this case may not be the end for this parisian

claim for damages when a Member State fails to comply with 2008/50/EC.<sup>113</sup>

#### **IV. Analysis: Evaluate effectiveness of current EU Air quality Legislation**

As WHO established, air pollution levels are not equal between citizens of member states, or within member states, with disadvantaged socio-economic groups facing the brunt of the air pollution disproportionately.<sup>114</sup> Since air pollution causes 300,000 premature deaths in Europe

<sup>115</sup> This section will analyze the previously mentioned legal landscape of current air pollution EU law and conclude that it is not effective in addressing and reducing the negative health impacts from air pollution inequality.

##### **A. Problems with Enforcement**

As seen above, although EU Directives are binding law on member states, many countries have chosen not to comply with the pollution limit values laid out in the Directive, to the detriment of their citizens.<sup>116</sup>

But the Commission has imposed fines in other environmental situations, demonstrating that they are willing to utilize this tool depending on the breach.<sup>121</sup> For example, after Greece ignored the first CJEU judgment for noncompliance and continued to allow toxic waste to be dumped in the river Kouroupitos in violation of EU law, the Commission brought Greece back to the CJEU, and in the second judgment, the CJ

Under Articles twenty three and twenty four, the Directive permits member states to include

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*may*

aimed at protecting vulnerable groups in their action plans when they have already exceeded the EU limit values on pollution.<sup>132</sup> Since the exceedance has already happened, vulnerable communities are likely already feeling the negative health effects associated with pollution exceedances. Instead of being proactive, the Directive takes a permissive and reactive approach, thus prolonging the suffering of these groups without providing a remedy to cure the disparate health impacts levied on the most vulnerable communities.

The current EU air pollution legislation fails to adequately protect disadvantaged socio-economic groups from the negative health impacts caused by air pollution. The morbidity rate resulting from air pollution is too high for inadequate legislation.<sup>133</sup> new air pollution Directive attempts to reform some of these inadequacies.

#### **V. The Commission's Proposal**

Fifteen years after the enactment of Directive 2008/50/EC, the European Commission has begun campaigning that the EU Council and Parliament should pass a new Directive for ambient air quality.<sup>134</sup> The European Commission is the legislative branch of the EU and proposes new EU laws.<sup>135</sup> In support of the revision, the Commission references the severity of air pollution on

<sup>136</sup> ~~AC 2015-4, the Commission proposed a Directive in 2012, which was adopted in 2015. The Commission proposed a Directive in 2012, which was adopted in 2015. The Commission proposed a Directive in 2012, which was adopted in 2015.~~

<sup>140</sup> The current pollutant value limits are set out in Directives 2004/107/EC and 2008/50/EC, and almost every pollutant has a larger concentration limit than what is recommended by WHO.<sup>141</sup> For example, as discussed above, 2008/50/EC sets the limit value for annual nitrogen dioxide at 40 while WHO sets it at 10.<sup>142</sup> Additionally, the EU sets their annual limit value for PM10 at 40, while WHO air quality guidelines put it at 15.<sup>143</sup> revision works to bridge this gap.

In order to align the Directive more closely with WHO guidelines on Air Quality, the Commission has listed three different policy options that correlate with a different degree of alignment and will require the European Council and Parliament to make a political decision.<sup>144</sup>

alignment (I-1), closer alignment (I-2) and partial alignment (I-3), with a limited number of

<sup>145</sup> The Commission concluded that the

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amongst member states to allow easier information sharing and comparing.<sup>166</sup> Important changes realized in the revised Directive include a requirement for member states to discuss methods for acquiring more funds to improve the rate of compliance and to inform their citizens about the dangers of postponement in regards to the environment and human health.<sup>167</sup> Air quality plans

under Article twenty three, when limit values of pollutants in ambient air are exceeded by a member state.<sup>168</sup> Furthermore, the proposed revision includes an update requirement for member states if, after implementing an air quality plan, the exceedance continues for three more years.<sup>169</sup>

<sup>170</sup> The Commission also amended an important

measures aiming to the protection of sensitive population and *vulnerable groups*, including

<sup>171</sup> Importantly, improved modelling and monitoring will be

## **VI. Analysis of the proposed revision of the Directive.**

The next section will analyze the Directive through an environmental justice lens and conclude that the Council and European Parliament should pass the revision. In addition, there are amendments the parliament and council can recommend that can improve the Directive to aid vulnerable groups and reduce the disproportionate health impacts. Lastly, this paper will determine if an alternative form of legislation is necessary to tackle air pollution.

### **A. The EU Council and Parliament Should Choose Alignment I-3**

The EU parliament and council should choose alignment option I-3, partial alignment with WHO air quality guidelines. As mentioned above, option I-3 matches the least of the three policy options to WHO air quality guidelines and has a PM2.5 limit value of compared to the current Directive, which has an annual PM2.5 limit value of 25 .<sup>179</sup> But under I-3, there is still a decrease in pollution in ambient air which provides a health benefit to the citizens of the EU member states.<sup>180</sup>

Although alignment I-3 is less ambitious than I-2 and I-1, it provides the most realistic limit values for member states to meet.<sup>181</sup>

One of the principal changes to the current Directive under the proposal is creating a right for





