

Industrial Emissions Law: EU and ECHR

Justine Schönfeld-Quinn

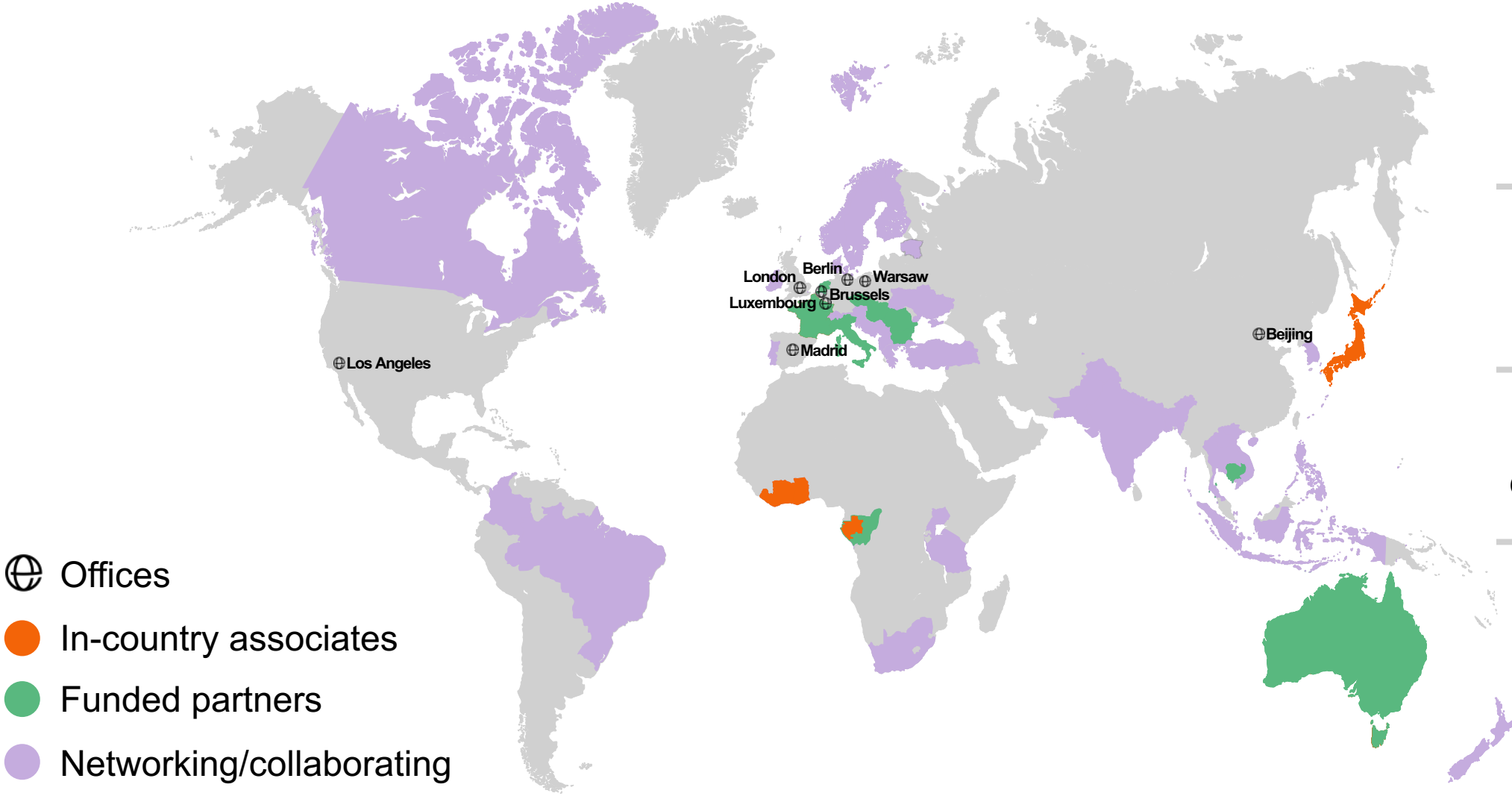
Thriving Planet

Lead of Emissions Reduction

September 2023

ClientEarth[Ⓢ]

Where we work



- 🌐 Offices
- 🟠 In-country associates
- 🟢 Funded partners
- 🟣 Networking/collaborating

300+
staff



200+
partners



50+
countries





Air Pollution and Health

- Air pollution is contamination of the indoor or outdoor environment by any chemical, physical or biological agent that modifies the natural characteristics of the atmosphere.’ (WHO)
- 6.7 million premature deaths worldwide (WHO), 300 thousand annually (EU). 89% of European city dwellers breathe unsafe levels of nitrogen dioxide (NO₂). 96% of breathe unsafe amounts of PM_{2.5}.

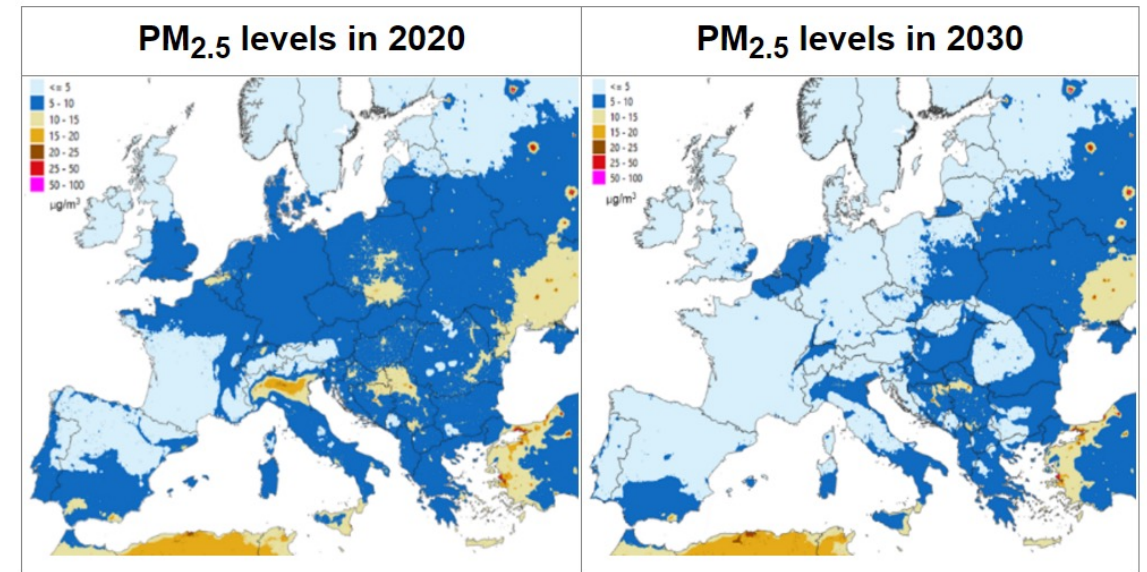
<https://www.who.int/teams/environment-climate-change-and-health/air-quality-and-health/health-impacts/types-of-pollutants>

EU Ambient Air Quality Directive v WHO (AQG 2021)

Ambient Air Quality Directive (AAQD) (2008):
& Commission proposal for the AAQD Recast 23/24
(Article 13 and Annex I):

- **NO₂** from 40µg/m³ to 20µg/m³ and
- **PM_{2.5}** from 25µg/m³ to 10µg/m³ by 2030

Twice as high as WHO guidelines (AQG 2021).



(WHO guidelines: <5 µg/m³, annual; 2030 proposal: <10 µg/m³; current directive: <25 µg/m³)^[1]

EU Ambient Air Quality Directive v WHO (2021) AQG

The Ambient Air Quality Directive (AAQD) defines and establishes ‘objectives for ambient air quality designed to avoid, prevent or reduce harmful effects on human health and the environment as a whole’ (Art. 1, para 1).

It imposes **limit values for pollutants** and requiring member states to devise **air quality plans in case of limit value exceedances**.

MS are required to ensure:

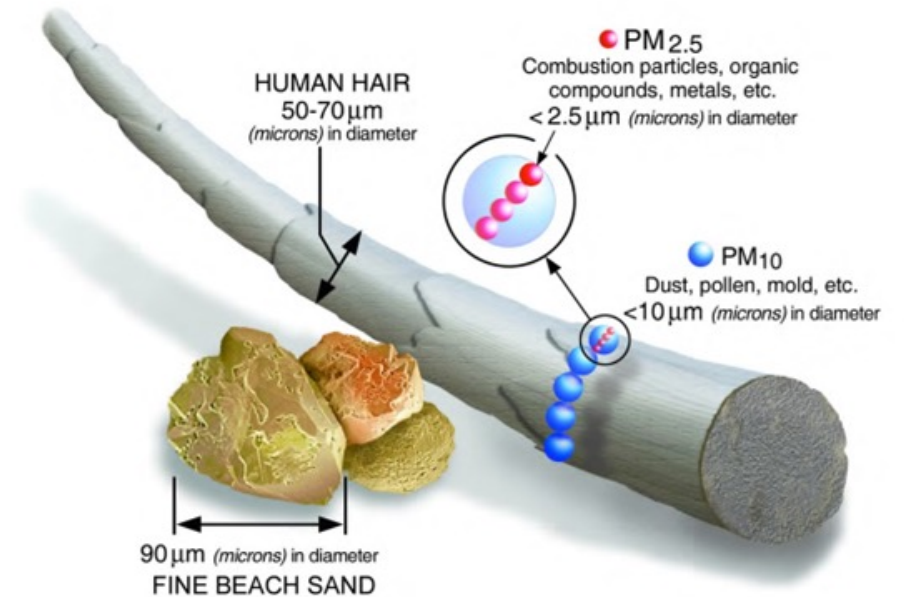
- **Levels of sulphur dioxide, PM₁₀, PM_{2.5}, lead, carbon monoxide, nitrogen dioxide and benzene** in ambient air throughout their zones and agglomerations do not exceed the air quality limit values laid down in Annex XI.
- ...’whenever the exceeding of the limit values could endanger human health the persons concerned must be in a position to rely on mandatory rules in order to be able to assert their rights’.
- Case C-61/21 – *JP v Ministre de la Transition écologique*: no individual right to clean air, no right to compensation under EU law)

Pollutant	Period	EU Directive (2008/50/EC)	WHO Air Quality Guidelines (2021)
SO ₂ (µg/m ³)	1 hour	350 (max. 24x/year)	-
	24-hour	125 (max. 3x/year)	40
NO ₂ (µg/m ³)	1 hour	200 (max. 18x/year)	-
	24-hour	-	25
	Annual	40	10
PM ₁₀ (µg/m ³)	24-hour	50 (max. 35x/year)	45
	Annual	40	15
PM _{2.5} (µg/m ³)	24-hour	-	15
	Annual	20 (since 2020)	5

The Ambient Air Quality Directive: Procedures

Monitoring

- **Assessment regime:** fixed monitoring stations, modelling, indicative measurements and objective estimation
- **Minimum number of monitoring stations** based on pollution levels and size of population exposed (Annex V)
- **Location of stations:** where the highest concentrations occur (Annex III) (standing to challenge location: Case C-723/17 *Craeynest*).
- **Information and Reports:** to the public and to the European Commission.
- **Penalties:** MS must establish rules on penalties that are 'effective proportionate, and dissuasive' (Art. 30).



Ambient Air Quality Directive (2008) – Air Quality Plans, Art. 23(1)

- Where air quality limit values for pollutants in ambient air are exceeded, member states shall ensure that air quality plans are established in order to achieve the limit values. **Where there is a risk that limit values or alert thresholds may be exceeded**, individuals concerned are entitled to bring proceedings to require competent authorities to draw up an **air quality plan** (C-404/13 *ClientEarth*, para. 53–56; C-237/07 *Janecek*, para. 35–42).
- The plan must set out appropriate measures, so that the exceedance period can be kept as short as possible.
- At a minimum: **information about the nature and assessment of the pollution, the origin of pollution including a list of the main emission sources responsible for pollution**, as well as details of those factors responsible for the exceedance and of the measures adopted... an estimate of the improvement of air quality planned and of the expected time required to attain these objectives.

The Industrial Emissions Directive (IED) covers > 52,000 industrial activities in EU

Energy
e.g., gas

Waste
e.g., waste treatment,
biomass incineration

Chemicals
e.g., plastics, hydrogen

Metals
e.g., steel

Minerals
e.g., cement

Other activities
e.g., agriculture,
textiles, paper, CCS

Industrial Emissions Directive (IED) 2010/75/EU

- Defines pollution: Art 3(2) ‘pollution’ means the **direct or indirect** introduction, as a result of human activity, of substances, vibrations, heat or noise into air, water or land which may be **harmful to human health** or the **quality of the environment**, result in **damage to material property**, or impair or **interfere with amenities and other legitimate uses of the environment**;
- Emission defined: Art 3(4) ‘emission’ means the direct or indirect release of substances, **vibrations, heat or noise** from individual or diffuse sources in the installation into **air, water or land.**’
- **Art. 4(1)** ‘Member States shall...ensure that no installation or combustion plant, waste incineration plant or waste co-incineration plant is operated without a permit.’

Industrial Emissions Directive (IED)

- **Permit conditions, Art 14 (1): necessary measures to comply with Art. 11 + Art. 18, including at least:**
 - (a) **Emissions limits** for Annex II substances and all other significant polluting substances
 - (b)/(e) Appropriate measures for **protecting groundwater/soil, and waste management**
 - (c)-(d) Suitable emissions **monitoring requirements & annual reporting** for validation
 - (g) Provisions **minimising long-distance or transboundary pollution**
- **Art. 11: basic obligations for operators**
 - All appropriate preventative measures taken against pollution
 - **Best available techniques** are applied
 - No significant pollution is caused
 - Generation of waste prevented in accordance with WFD; apply waste hierarchy
 - Energy is used efficiently
 - Necessary measures taken to prevent accidents
 - Necessary measures taken on closure to avoid pollution / remediate the site
- **Art. 18: other environmental quality standards from other env. legislation, leading to additional conditions (measures/stricter limits)**





The Industrial Emissions Directive and AAQD: Case C 375/21

Image source: Greenpeace

Maritsa East 2 (1,624MW) the largest thermal power plant in the Balkans. In a preliminary reference on the interpretation of the IED, the EU Court of Justice, held that Bulgaria violated EU law when it granted, an updated operating **permit with derogations** allowing excessive emissions of sulphur dioxide (SO₂) for an indefinite time.

- **Cumulative pollution:** a ‘derogation cannot be granted’ if it would ‘contribute to the exceedance of air quality limit values’ in the Ambient Air Quality Directive for SO₂.
- **Precautionary principle:** ‘where uncertainties remain as to whether less strict emission limit values will lead to ‘significant pollution’... ‘a derogation cannot be granted.’
- **Scientific evidence:** In assessing pollution, “all the relevant scientific evidence” on pollution shall be considered.

No derogation can be granted if it ‘contributes’ to the exceedance of the Ambient Air Quality Directive’s air quality limit values for SO₂ (Judgment, para 52).

The Health Effects of Pollution and the ECHR – Article 8

- **An applicant who claims a violation of their rights under the Convention by a State party** (Art 8 right to private or family life or home) in circumstances where the interference has attained a **minimum level of severity**.
- **A relationship between the acts or omissions of a State party and the alleged violations** of Convention rights.
- **Evidence:** exposure to **excessive pollution over a significant period of time**: may be sufficient to bring a case within the scope of Article 8, even if a direct causal link between ill-health and the pollution in question cannot be established (*Fadeyeva v. Russia*). In *Fadeyeva*, the exceedance of the maximum permissible limits for toxic elements in the air near the applicants' home, which are defined as safe concentrations, there is a presumption that this pollution is potentially harmful to health and wellbeing. The 'very strong combination of indirect evidence and presumptions' brings the applicant within the scope of Article 8 ECHR (para 88). **The ECtHR also considers nuisance**, this must be shown to have had a **serious effect on the applicant(s) and direct impact their quality of life**.

Key Cases: The Health Effects of Pollution and the ECHR

- ***Fadeyeva v. Russia***, no. 55723/00 (steel plant emissions: dust, carbon, formaldehyde (violation of Art. 8))
- ***Cordella and Others v. Italy***, no. 54414/13 and 54264/15 (Steel plant: PM10 and SO2) (mass claim) (violation of 8, and 13 – effective remedy)
- ***Pavlov and Others v. Russia***, no. 31612/09 (steel and cement: dust, NO2, phenol and formaldehyde) (22 applicants, violation of Art 8 air and drinking water)
- ***Smaltini v Italy*** (no. 43961/09) (Article 2) dismissed as manifestly ill-founded.



Thank you

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