FAX +49 611327618 536 1/19 12 January 2016 13:10:28

4 N 1727/15.WI(2)

[stamp] Geulen & Klinger
received on 15 Jan. 2016, Geulen & Klinger, lawyers

ADMINISTRATIVE COURT WIESBADEN

[emblem]

DECISION

In the contentious administrative proceedings

Deutsche Umwelthilfe e.V.,
represented by the Board of Management
Fritz-Reichle-Ring 4, 78315 Radolfzell am Bodensee

- judgement creditor -

authorised lawyers:
Dr. Reiner Geulen and Colleagues, lawyers,
Schaperstraße 15, 10719 Berlin

versus

The Federal State of Hesse
represented by the Hesse Ministry for the Environment, Energy,
Agriculture and Consumer Protection,
Mainzer Strasse 80, 65187 Wiesbaden
- 53a 12.45.06 -

- judgement debtor -

in the matter of

Emission Control Law
(here capital of the Federal State Wiesbaden)

the 4th Chamber of the Wiesbaden Administrative Court decided in the person of the

Vice President of the Administrative Court Dr. Wittkowski
judge at the Administrative Court Ms Diedrich
judge at the Administrative Court Mr Hartmann

on 11 January 2016:

that the Hesse Ministry for Environment, Climate Protection, Agriculture and Consumer Protection has been issued a warning that it will be ordered to pay an administrative fine amounting to EUR 10,000 in the event that the Ministry fails to fulfil its obligation resulting from the judgement of the Wiesbaden Administrative Court dated 10 October 2011 (ref. no.: 4 K 757/11.WI) to draw up an air quality plan for the city of Wiesbaden within a period of nine months following notification of this decision.

The costs of the proceedings must be borne by the judgement debtor.

The value of the dispute is established at EUR 10,000.

REASONS:

I.

The judgement creditor requests the enforcement of an administrative court judgement.

The Wiesbaden Administrative Court obliged the judgement debtor in its judgement dated 10 October 2011 (ref. no.: 4 K 757/11.W 1(1)) to change the air quality plan applicable to the city of Wiesbaden in such a way that it includes the measures necessary to comply as quickly as possible with the limit values for NO_2 to the amount of 40 µg/m^3 (mean emission limit

value averaged over the calendar year) laid down in the 39th Ordinance for the Implementation of the Federal Emission Control Act (based on two locations in the city of Wiesbaden which are described in detail).

The Chamber gave in its judgement the following reasons:
"According to Art. 47 (1) of the Federal Emissions Control Act (BImSchG) in conjunction with Art. 27, 3 of the 39th Ordinance for the Implementation of the Federal Emission Control Act (BImSchV) there is an obligation to draw up an air quality plan in relation to nitrogen dioxide for the Rhine-Main area including Wiesbaden, because the mean emission limit value averaged over the calendar year for nitrogen dioxide (NO_2) of 40 micrograms per cubic meter, established for the protection of human health, is exceeded in the urban area of Wiesbaden. This air quality plan must include in line with the specifications laid down in Art. 47 (1) and Art. 27 (2) of the 39th BImSchV appropriate measures to keep the period of non-compliance as short as possible.
Since the factual conditions of Art. 47 (1) BImSchG are given in the areas subject to the present proceedings, the air quality plan is to be updated, and appropriate measures for the permanent and fastest possible reduction of NO_2 emission must be defined therein. It is not at the discretion of the defendant Federal State whether this must be fulfilled or not (see Higher Administrative Court (OVG) Lüneburg, ibid).
The air quality planning of the defendant Federal State did not fulfil these requirements as per the date of the hearing, so that the Federal State must be ordered on the basis of the existing legal actions to remedy the identified deficiencies immediately.
It is undisputed that the air quality plan from 2005 is not sufficient in terms of nitrogen dioxide pollution, i.e. it is imperative to update the plan to be able to comply with the limit values for nitrogen dioxide applicable in the meantime. In view of the fact that the limit values for nitrogen dioxide have been clearly and widely exceeded in the Rhine-Main area, the Hesse Ministry for the Environment, Energy, Agriculture and Consumer Protection started updating the air quality plan already in 2008 as a consequence of the expected introduction of EU limits for NO_2 in the year 2010, with the aim of having an updated air quality plan for the conurbation in 2010. The updating procedure was, however, not completed by the date of the hearing on 10 October 2011. This means that no current air quality planning that complies with the normative standards for nitrogen dioxide exists. The draft of the first

update - Wiesbaden subplan - has however been made available to the public in the meantime, so that a binding updated air quality plan can be expected in the foreseeable future. If the provisions of the updated plan, which will be completed soon, are lawful, the legal actions would have to be dismissed as unfounded. This is however not the case. The current draft is not sufficient in terms of its content. Even if all measures laid down in the draft were implemented, the draft itself states that the applicable emission limit value for nitrogen dioxide would not be complied with either at the home of plaintiff 1) or at other heavily affected locations in the urban area of Wiesbaden. According to the forecast for the NO_2 concentration for 2015 (figure 36, page 61 of the draft plan, folio 178 of the court records) it can be seen that the limit values are still exceeded considerably at three of the five measurement points. In view of the normative specifications that are imperative for health protection, values that are permanently exceeded would only be acceptable if all appropriate and reasonable measures to reduce the nitrogen dioxide concentration have been exhausted in the planning. The defendant Federal State itself states in the draft of the air quality plan on page 63 (folio 180 of the court records) that this is not the case. The air quality plan does not include an environmental zone in the urban area of Wiesbaden, although the effectiveness of such a zone has been confirmed by an expert, and the proportionality of this measure is given - according to the opinion of the Ministry for Environment - "because a measurable improvement in the air quality is hardly possible with any other measure without substantially restricting mobility". Therefore, it is surprising that the defendant Federal State refused to include an environmental zone in the Wiesbaden subplan with reference to the refused consent of the competent road traffic authority, i.e. the Hesse Ministry for Economics, Transport and Regional Development. This refusal of consent, which is justified by the disproportionality of the measure, is obviously unlawful, because the Economic Affairs Minister only considers in the proportionality assessment carried out by him that the introduction of an environmental zone could cause financial burdens for the population and the economy and that it would have minimum effects on the nitrogen dioxide pollution from his perspective. The central goal of fixing the limit values and the air quality planning necessary for compliance with the limit values that serves the protection of human health was, however, completely disregarded. Driving bans in environmental zones have hitherto been considered appropriate without exception by the jurisdiction when they have been subjected to judicial review, most recently by the Lüneburg Higher Administrative Court

(ibid), also with regard to the reduction of traffic-related NO_2 pollution. Such NO_2 pollution in urban areas is attributable on the one hand and to a large extent to automobile traffic - in Wiesbaden the rate amounts to 63.6% - so that it is appropriate and necessary to also intervene here to comply with the requirements of Art. 47 (4) BImSchG. With view to the small, non-measurable effects of other local measures included in the air quality plan for Wiesbaden, there does not seem to be any alternative to introducing an environmental zone if one wants to come closer to a compliance with the limit value of 40 µg/m^3 in the near future than has been the case with the measures provided for in the air quality planning so far."

The judgement has become final since the withdrawal of the appeal by the defendant in December 2013.

On 19 November 2015 the judgement creditor applied before the Wiesbaden Administrative Court to impose an administrative fine against the Hesse Ministry for the Environment, Climate Protection, Agriculture and Consumer Protection. The judgement creditor asserts that the authority had not complied with the obligation imposed upon it by the judgement of the Administrative Court and that it is therefore necessary to threaten the imposition of an administrative fine pursuant to Art. 172 of the Rules of Administrative Courts (VwGO). Reference is made hereby to the application dated 17 November 2015 and the letter dated 26 November 2015 along with the respective annexes.

The judgement creditor applies to

> warn the Hesse Ministry for the Environment, Climate Protection, Agriculture and Consumer Protection that it must pay an appropriate administrative fine of up to ten thousand euros to force it to fulfil the obligation resulting from the judgement of the Wiesbaden Administrative Court dated 10 October 2011 (4 K 757/11.WI), to be paid by a given deadline;
>
> or alternatively,

to impose an appropriate administrative fine against the Hesse Ministry for the Environment, Climate Protection, Agriculture and Consumer Protection to force it to fulfil the obligations resulting from the judgement of the Wiesbaden Administrative Court dated 10 October 2011 (4 K 757/11.WI).

The judgement debtor applies

to reject the application.

In its opinion, the application for enforcement is inadmissible because it is without any enforcement effect. The judgement debtor maintains that an enforcement measure within the same legal entity is not foreseen in the Rules of the Administrative Court. The budget of the Hesse Ministry for the Environment, Climate Protection, Agriculture and Consumer Protection is regulated in the budget plan of the Federal State of Hesse as Section 09, and the revenues of the administration of justice in Section 05. The imposition of an administrative fine would mean that the corresponding amount would merely pass from Section 09 to Section 05, and thus remain in the overall budget of the Federal State of Hesse. Since an enforcement measure should always cause the judgement debtor to carry out a certain action - in this case the issue is a mere "technical shift of budgetary funds for accounting purposes" - the application for threatening an administrative fine is "simply without effect".
The application is also inadmissible since the judgement of the Administrative Court to be enforced "does not contain an enforceable title that goes beyond the establishment of an environmental zone". All other measures put forward by the judgement creditor cannot be derived from the enforcement title even by interpretation, and have, furthermore, not been the object of pleading in the previous proceedings. The aim of the judgement creditor is to once again force a decision to be taken on the same matter in dispute.
Moreover, the application is unfounded because, since the decision was passed, the judgement debtor has initiated the planning measure viable for it by establishing an environmental zone, to the extent this was feasible in line with the related legal provisions.

The judgement debtor defends its restriction to the downtown area, the transitional period and the exceptions, because these are common throughout Germany. By doing so, the judgement debtor has fulfilled the obligations resulting from the title.
In addition, the implementation of further measures must be legally and actually possible for the judgement debtor. In fact the judgement debtor is prevented from including any measures from other legal entities in the plan without coordinating these with the relevant authorities. Art. 47 (6) BImSchG does not contain an independent legal basis for directing certain measures, but provides for other powers to intervene - although with limited discretion with respect to inclusion in the air quality plan, if applicable. With respect to the enforcement proceedings and due to the principles concerning the default of the authority set out above, this means, however, that it is not possible to force the judgement debtor to carry out actions which do not fall within its scope for manoeuvre. If the authority itself as the authorised organisational unit is the sole addressee of the threat, the authority must actually be in a position to comply with this obligation. The Ministry for the Environment as the issuer of the plan can only be required to examine all relevant measures and to demand their inclusion in the plan from the competent and responsible bodies and authorities where appropriate. The measures mentioned and requested by the judgement creditor lie predominantly within the area of responsibility of other legal entities, and - beyond this - might have to be passed on to the political level and are subject to legislative procedures, which means that the judgement debtor is definitely not in a position to carry out these measures from a legal and practical point of view. The Ministry for the Environment does not have the possibility of establishing own or further reaching measures in the plan without the consent of the respective bodies of the public administration responsible for their implementation. This means that the city of Wiesbaden cannot be forced, for example, to undertake traffic control measures. The same applies if these measures fall within the legislative competence of the Federation. Additional measures may be included in the air quality plan only after creating the appropriate legal bases and a legal examination by the respectively competent authorities.
To accelerate this process, the judgement debtor has brought in to the Conference of the Ministers for the Environment (UMK) a ten-point application with precise proposals for the creation or modification of the legal bases for improving the air quality which the UMK,

however, only passed as a test order; reference is made to this end to the draft resolution on item 37 of the 85th UMK from 11 to 13 November 2015.
The alternative application filed is inadmissible because Art. 172 VwGO constitutes the more specific legal regulation for the enforcement of titles against authorities. This alternative application must, however, also be rejected for the aforementioned reasons.

The Court has rejected the application filed by the judgement debtor for an extension of the deadline of one month to make statements, having regard to the legal principle of accelerated enforcement proceedings laid down in Art. 170 (2) sentence 2 VwGO.

II.

The application is accepted and the requested threat of an administrative fine pursuant to Art. 172 VwGO as outlined in the operative provisions of the judgement shall be pronounced.

The general prerequisites for enforcement of Art.167 f. VwGO and the admissibility requirements for administrative fine proceedings pursuant to Art. 172 VwGO are given. It was not contested that the judgement creditor had served to the judgement debtor an enforceable copy of the judgement now to be enforced, including a note that the judgement has become final, notification of service and execution clause. The regulations of Art. 172 VwGO shall apply to the requested enforcement of the judgement requiring the drawing up an air quality plan, because Art. 123 VwGO referred to therein is not restricted to the issue of administrative acts. In addition, any application of the regulations regarding enforcement of civil judgements as outlined in Art. 883 ff. Code of Civil Procedure (ZPO), which would be otherwise applicable pursuant to Art.167 (1) VwGO, would not be appropriate for enforcement vis-à-vis public authorities in the area of administrative law, see also regulations of Art. 894 ZPO.

The Court heard the Hesse Ministry for the Environment, Climate Protection, Agriculture and Consumer Protection regarding this enforcement application and requested its opinion within one month.

The application is not inadmissible - as the judgement debtor asserts - because, in case of imposing an administrative fine, the necessary means would ultimately be paid from the budget of the Federal State of Hesse and then go back to said via the Hesse Ministry of Justice. It is true that the administration of the third power by the executive, still existing in Germany (and in Austria), no longer fulfils the current minimum requirements of the European Union imposed on candidate countries regarding the situation of rule of law required for admittance, but this may, nevertheless, not prevent the enforcement of administrative court judgements. It is the third power's duty, in particular that of the administrative, social and financial courts, to examine actions of executive authorities to ascertain whether these are lawful, see Art. 19 (4) German Basic Law (GG). In this respect, German Basic Law assumes a division of power as it results from Art. 20 (2). The fact that the third power in Germany is still administered by the executive to a great extent - i.e. it is not organised in a legally independent way (by parliamentarians and elected judge representatives) and with its own budget, as is the case in other EU states (except Austria) - cannot lead to a negligence of the third power's duties under constitutional law and a refusal to grant citizens effective legal protection if their authorities remain inactive.

The application must be complied with, because the prerequisites of Art. 172 VwGO are also given in fact. According to this provision, the first-instance court may, insofar as the authority does not comply with the obligation imposed on it in line with Art. 113 (5) VwGO, pass a decision upon application to threaten the authority with an administrative fine of up to EUR 10,000 with a deadline, impose this fine after the deadline has expired without result, and officially enforce it.

The written application correctly states that the judgement debtor has not or only insufficiently met its obligation to draw up an air quality plan for the city of Wiesbaden in line with Art. 47 (1) and Art. 27 (2) 39th BlmSchV imposed on it in the Administrative Court judgement dated 10 October 2011. The draft of an updated air quality plan for the city of Wiesbaden submitted in these application proceedings still does not comply with the legal and judicial requirements, because both the valid air quality plan and the draft to update it do not include any measures appropriate pursuant to Art. 47 (1) and 27 (2) of the 39th BlmSchV to keep the period of an ongoing exceedance of the air pollution values as short as

possible, thus it does not consider the Administrative Court's legal opinion laid down in the judgement mentioned above. The judgement requested that a list of appropriate measures be drawn up in an air quality plan, that their respective reducing effects be quantified and that it be assessed when they would become effective, in order to comply with the emission limit values for NO_2 as soon as possible.

According to Art. 121 No. 1 VwGO, final judgements are binding upon the parties and their legal successors, when a matter in dispute has been decided upon.
The legal prerequisites expressed in the judgement are sufficiently founded and are enforceable. The Administrative Court explained clearly enough that the judgement debtor is obliged, and to be sentenced by the judgement, to submit a air quality plan which includes measures which altogether are appropriate to comply with the emission limit value for nitrogen oxide of 40 µg/m^3 at this location in the short term. In this respect, it was not up to the Court itself to provide the authority with precise measures which would help to make compliance possible. On the contrary, the Administrative Court explicitly determined in its judgement dated 10 October 2011 as follows:

"The Court has not misjudged that the defendant Federal State has a certain freedom with respect to air quality planning. The respective limit values only set normative goals, while precise specifications of the measures to be taken are not indicated. This freedom of planning does however not mean that the defendant Federal State is completely free in its planning decisions. The planning should rather be assessed based on the normative goals, also with respect to measures which have not been taken. It is true that there is no right to have a specific measure imposed because the authority has some scope for manoeuvre. The non-inclusion of intruding measures despite an ongoing exceedance of the limit values does, however, contradict the legal standards and is thus unlawful."

The express mentioning of an environmental zone as an intruding measure does, however, in no way mean that the defendant in question could limit itself thereto, which can clearly be concluded from the wording "*intruding measure*".
The substantial res judicata established in that way not only embraces the authority's general obligation to issue a new assessment, but also "the Court's legal opinion" as laid down in the reasons for the decision of the respective judgement [*Bescheidungsurteil*] (see also Federal Administrative Court (BVerwG), judgement dated 3 November 1994 - 3 C 30/93 Juris, guiding principle 2 and recital 31). This means that the Court's legal opinion is relevant for the judgement debtor and the judgement debtor must take it into account when further updating its plan and, as a result, update the air quality plan for the city of Wiesbaden in such a way that it lists appropriate measures which make it possible to comply with the limit values in the short term. Any other regulation would only apply if the actual or legal circumstances the respective judgement is based on had changed considerably (see BVerG, decision dated 1 June 2007 - 4 B 13/07 -. Juris, recital 4).

With respect to air pollution in the city of Wiesbaden, however, this is not the case, at least not at the Ringkirche and Schiersteiner Strasse measuring stations, as can be seen from the measurements of the Hesse Regional Office for the Environment and Geology for the years 2012 to 2014.
In view of the fact that the limit value for NO_2 is still considerably exceeded, even the issue of a so-called action plan pursuant to Art. 47 (2) BlmSchG might also be taken into consideration, see also European Court of Justice (ECJ), judgement dated 25 July 2008, ref.: C 237/07 and Stuttgart AC, decision dated 14 August 2009, ref.: 13 K 511/09, recital 51 to 57 and 173 to 178. As enforcement court, the Court is however generally impeded from concretising the enforcement title beyond its clear wording to the detriment of the judgement debtor.
The Administrative Court based, however, its judgement on the fact that legal standards have only been complied with, if sufficient measures are listed which could help to achieve compliance with the emission limit values within a short period of time. This is, without

doubt, still not the case here. The Hesse Ministry for the Environment, Climate Protection, Agriculture and Consumer Protection has neither listed measures which could reduce NO_2 air

pollution in the Wiesbaden urban area in such a way that the limit value of 40 µg/m^3 can be complied with, nor presented a concept for reaching this goal in a foreseeable time.
The judgement debtor fails to understand that the air quality plan to be drafted must not be restricted to measures which can be implemented by the ministry itself or which have already been provided by other administrative bodies or third parties. It must rather indicate how the pollution can be reduced on a short-term basis, independently of who is responsible for the individual measure. Thus, the Stuttgart AC, which was cited by the judgement debtor (decision dated 14 August 2009, ref.: 13 K 511/09, recital 81) found that it is irrelevant with respect to the protective goals of Art. 47 BImSchG, whether the measures suitable to reach said goals are carried out by state or municipal bodies or by third private parties.
To this end, the Chamber also refers to the statements made in the judgement dated 30 June 2015 (ref.: 4 K 97/15 .Wl (2)) with respect to the contentious administrative proceedings between the parties involved about the air quality plan for the city of Limburg:
"These statements indicate that the authority did not intend to draw up any planning or concept which would reduce air pollution to below the limit values. The authority rather shifts the responsibility to the interested parties who are not a party to the proceedings but whose legal interest will be affected by the decision, explaining that obviously financial funds and broad public acceptance are lacking to implement suitable measures to this end. According to Art. 47 (1) sentence 3 BImSchG it is ***the duty of the competent environmental authority to include measures in the air quality plan which are actually appropriate to reduce pollution, independently of who is responsible for implementing the respective measure****. Furthermore, it is the authority's duty to quantify as a forecast the effectiveness of these generally suitable measures (reducing values) to be able to examine and select in a further step which measure shall be taken to reach compliance of the readily binding limit values.*
Pursuant to the requirements of Art. 47 (1) BImSchG and 27 (2) of the 39th BImSchV, the air quality plan to be drafted must contain measures which keep the period in which the limit values are not complied with as short as possible (see also BVerwG, judgement dated 5 September 2013 -7C 21/22, NVwZ 2014, 64 recitals 59, 60, stating that the exceedance of the

emission values must be ended as soon as possible and it is not sufficient to pursue the gradual compliance of emission limit values).

The defendant will only fulfil its duties if its planning is based on an overall concept which aims to comply with the limit values. It is not sufficient to only consider individual measures in the planning and to fail to specify when the overall goal will be achieved by implementing such measures (see also Sigmaringen AC, judgement dated 22 October 2014 - 1 K 154/12).

The air quality plan will only be effective if it identifies appropriate options for action to all bodies (co-)responsible for keeping the air clean, and evaluates the effectiveness of such measures, thus forming a basis to opt for one or another measure with the foreseeable result that the limit values will be complied with by the due date.

Such concept must demonstrate ways and options to protect the affected citizens against further health damage caused by the irritant gas nitrogen oxide which seriously harms the lung function because it can penetrate deep into the respiratory system due to its minimal water solubility.

It is doubtful whether economic aspects may play a role in this at all. According to the ECJ judgement dated 19 December 2012 (-C-68/11 recitals 59-64) it must be assumed that financial or economic aspects may not justify refraining from introducing measures to comply with the emission limit values. The ECJ only makes an exception to this principle in the event of force majeure (recital 64). The decision of the Federal Administrative Court dated 5 September 2013, according to which a procedure in several stages might be permitted if there are difficulties implementing the measures to be taken in accordance with the principle of proportionality, follows a similar line (BVerwG, reference as above, recital 59). This would, however, also to be demonstrated in an air quality plan.

The contested air quality plan for the city of Limburg from March 2012 does not meet the requirements explained above, but rather banks on the "Principle of Hope", i.e. on the effects of a further tightening of registration requirements for new vehicles (EURO norm 6), which however, after becoming effective, will only apply to new registrations, which is why the

defendant itself does not expect in its air quality plan a considerable reduction of emission values before the year 2020.
The Regional Administration's considerations concerning possible means to reduce nitrogen oxide pollution do not go beyond the abovementioned measures.
The establishment of an environmental zone is not considered in the air quality plan drawn up in March 2012, although its saving potential is 5-6% as far as nitrogen oxides are concerned. The first environmental zones were introduced in Germany at the beginning of 2008. As early as 2011, this measure was the subject matter in the application for legal action regarding the contentious administrative proceedings against the defendant referring to the city of Wiesbaden pending before the Wiesbaden Administrative Court. The defendant also dismissed the introduction of such a zone in Limburg on page 68 in the item 'treatment of citizens' objections' with the argument "that the catalogue of measures of the city of Limburg did not provide for the introduction of an environmental zone." The same is stated with respect to the proposed introduction of a city toll. ***It was and still is the duty of the Hesse Ministry for the Environment to draw up an own air quality plan, and the Regional Authority may not hide behind a "catalogue of measures" of a municipality to this end****."*

With respect to the standards, the Chamber refers to the reasons for the decision in the judgement dated 10 October 2011, now to be enforced. The judgement debtor has not followed this legal opinion hitherto. With regard to the inadequate processing of and/or compliance with the judicial obligation, reference can be made to the statements in the application dated 17 November 2015, page 9 to 42. Special consideration must also be given to the introduction of a flat-rate ticket for public transport, a city toll and a driving-through ban on diesel vehicles (on a temporary basis, for example, based on the last digit of the license plate). The provisions of Art. 40 (1) BImSchG clearly indicate that measures on restricting the traffic circulation may be taken on the basis of air quality plans. There is no legally relevant justification to refuse this planning process, and also no alternative, taking into account the roughly 2/3 share of road transport in the causation of the NO_2 pollution. The measures indicated in the draft resolution submitted to the Conference of Environment Ministers by the judgement debtor are indeed suitable of contributing to a reduction in NO_2

pollution, their effectiveness and anticipated introduction, however, still have to be assessed. According to the Air Quality Annual Report 2014 of the Regional Office for Environment and Geology, the limit value for NO_2 of 40 µg/m^3 is still clearly exceeded in Wiesbaden at the Ringkirche measuring station with 52.5 (2014), 55.2 (2013) and 57.4 µg/m^3 (2012) and at the Schiersteiner Strasse measuring station with 55.6 (2014), 58.8 (2013) and 59.8 µg/m^3 (2012).

From the current state of the administrative proceedings, i.e. the updating of the air quality plan, it can still not be seen how the limit value for NO_2 can be complied with in a short period of time at said measuring stations in Wiesbaden. It is not evident what measures will lead to compliance with the limit values at all, or whether this can be achieved within a short period of time. Therefore, the planning of the judgement debtor to keep the air clean in the urban area of Wiesbaden currently does not comply with either the legal obligations or those prescribed as a target in the judgement of the Administrative Court, but must be considered as still being inadequate.

Thus, a default within the meaning of Art. 172 VwGO can be assumed and an administrative fine must be threatened, to be paid by a given deadline.
The judgement debtor has not made any statements concerning the setting of a deadline according to Art. 172 VwGO.
The Chamber considers a period of nine months as appropriate. The Hesse Ministry for the Environment possesses sufficient knowledge to compile a list of measures to reduce the NO_2 pollution in the air in the area of Ringkirche and Schiersteiner Strasse, and to evaluate their effectiveness, so that these measures in their entirety lead to a compliance with the NO_2 limit value. The Ministry should also be able to estimate whether and when the respective expected pollutant reduction will occur, so that in two, or in three years at the latest, the limit values will also be complied with in Wiesbaden.
Regardless of the planning phase owed, which is the subject matter of these proceedings, i.e. the updating of the air quality plan, it will also be the duty of the Ministry to ensure the

implementation of the necessary individual measures by the respective public authorities and other bodies responsible, Art. 47 (6) BImSchG.

The amount of the threatened administrative fine of EUR 10,000 is appropriate. The legal framework of Art. 172 VwGO is used to the full, which is necessary given the importance of air quality plans for the protection of the resident population entrusted to the judgement debtor, the implementation of the legal and judicial standards, pending for years, and the infringement proceedings that have been launched in the meantime for this reason under EU law to the detriment of the Federal Republic of Germany, including the threat therein to impose sanctions.
The administrative fine can be imposed repeatedly until the judgement debtor's obligations have been fulfilled.

The decision on costs is based on Art. 154 (1) VwGO.
The value of the dispute is based on Art. 52 (1) of the Act on Court Fees (GKG). The Chamber establishes the value of the dispute of the main action, since the judgement (Bescheidungsurteil) passed in the main action is to be fully implemented with the application for enforcement (see in accordance with Hess. VGH, decision dated 26 March 1999 - 11 TM 3406/98, inter alia, Juris, recital 32).

Information on legal remedies

The parties involved may apply to appeal against this decision. The appeal must be submitted in writing within two weeks following notification of the decision to the

Verwaltungsgericht (Administrative Court) Wiesbaden

Mainzer Strasse 124

65189 Wiesbaden

The reasons as to why the appeal should be admitted must be stated within one month following notification of the decision. In the event that the reasons have not been submitted together with the appeal, they must be submitted to the

Hessische Verwaltungsgerichtshof
(Administrative Court of the Federal State of Hesse)
Brüder-Grimm-Platz 1
34117 Kassel.

The statement of the reasons must include a specific application, set out the reasons on which the decision is to be amended or set aside and deal with the appealed decision.

In line with Art. 67 (4) VwGO, legal representation is obligatory before the Administrative Court of the Federal State of Hesse. This also applies to procedural acts which initiate proceedings before the Administrative Court of the Federal State of Hesse.

The parties may appeal against the establishment of the value of the dispute if the value of the appeal object exceeds EUR 200 or if the court which issued the appealed decision approved an appeal in its decision. Appeal is only admissible within six months after the decision on the main action has become final or the issue has been otherwise resolved. If the value of the dispute is set later than one month before the expiry of this period, the appeal may be lodged within one month after service or informal notification of the court order.

The appeal concerning the value of the dispute must be filed in writing at the

Wiesbaden Administrative Court

or must be recorded at the court office.

Applications and statements can be submitted in writing without the involvement of a representative or recorded at the court office, Art. 68 (1) sentence 5 in conjunction with Art. 66 (5) sentence 1 GKG.

The Rules of Procedure applicable for the underlying proceedings shall be applicable for powers of attorney mutatis mutandis; Art. 68 (1) sentence 5 in conjunction with Art. 66 (5) sentence 2 GKG.

Electronic documents may be submitted to the Hesse Administrative Courts and the Administrative Court of the Federal State of Hesse in accordance with the Ordinance of the Regional Government on electronic legal relations with courts and prosecutors in Hesse, dated 26 October 2007 (legal gazette (I, p. 699). We hereby inform you of the necessity of a qualified digital signature on documents which are equal to a document to be signed in writing (Art. 55a (1), sentence 3 VwGO).

Dr. Wittkowski **Diedrich** **Hartmann**

Certified
Wiesbaden, 12 January 2016
Koss, judicial clerk
[seal of the Wiesbaden Administrative Court]

Receipt confirmation (EB)
of the service in line with Art. 56 (2) VwGO in conjunction with Art. 174 ZPO

Verwaltungsgericht Wiesbaden, Mainzer Straße 124, 65189 Wiesbaden

Lawyers
Dr. Reiner Geulen and Colleagues
Schaperstrasse 15
10719 Berlin

Ref. no.
4 **N** 1727/15**.Wl**

Please provide this receipt of confirmation with the receipt date and a signature and return it with immediate effect in writing or by fax to

Fax: (0611) 327618536

Receipt confirmation:
In the contentious administrative proceedings

Deutsche Umwelthilfe e.V. ./. Federal State of Hesse
the following documents have been received on _____.

Certified copy of the decision dated 11 January 2016

[stamp]Received
12 January 2016
Geulen & Klinger, Lawyers

_____

Date and signature

Response to (EB):

Verwaltungsgericht (Administrative Court) Wiesbaden
Mainzer Strasse 124
65189 Wiesbaden