

Our reference: Transport/EU/02

Commissioner Stavros Dimas
The Commissioner for the Environment DG
Environment Directorate-General
European Commission
B – 1049
Brussels
Belgium

By post and email to: stavros.dimas@ec.europa.eu

12 May 2007

Dear Commissioner Dimas

Setting and enforcing European Union Legal Limits for Air Quality

Summary

This letter is sent on behalf of the Campaign for Clean Air in London to ask you for reassurance, skillful facilitation and decisive action please in respect of three matters:

- first, please will you explain the reasons for the delay in the Second Reading of the proposed new European Union (EU) Directive on Air Pollution and give reassurances about the likely consequences of that delay?;
- second, please will the Environment Directorate seek to achieve, as facilitator for the Second Reading, at least the “Highest Common Denominator” compromise between the position taken formally last year by the Council of Ministers and the European Parliament in respect of that Directive?; and
- third, please will the Environment Directorate-General (DG) commence now the process for formal enforcement action against the Member States that breached the EU Legal Limits for coarse particulate matter (PM₁₀) in 2005 (and subsequently in respect of 2006)?

Other points are raised in this letter on which your comments would be most welcome.

We regret the length of this letter but given the seriousness of the issues involved, and the fact that your response could be relevant to all Member States, we consider that it is better to describe the issues fully rather than briefly. We have copied President Barroso since some of the points raised may have implications for other portfolios.

The Campaign for Clean Air in London

The Campaign for Clean Air in London has only one aim which is to achieve urgently at least World Health Organisation (WHO) recommended standards of air quality throughout London. Given that most of these have been required to be met since 1999 legislation by January 2005 (in respect

of coarse particulate matter i.e. PM₁₀) and January 2010 (for nitrogen dioxide i.e. NO₂), we have written recently to the Olympic Delivery Authority asking it to commit, as part of its wider commitment for London 2012 to be the greenest Games in modern times, to London achieving sustainably at least WHO recommended standards of air quality throughout London by no later than the London 2012 Summer Olympics. You were copied on that letter. Subsequently, the Mayor of London has made a landmark speech, setting out a vision of an economically successful, environmentally sustainable and socially just London to be achieved within the next five years or so.

The Campaign for Clean Air in London has received support from the Mayor of London, leading politicians from the four main political parties in London as well as leading business and community groups including the Central London Partnership, London First and The Knightsbridge Business Group. We have recently received a pledge of support from the National Society for Clean Air and Environmental Protection. Our campaign website is shown in the letterhead above. I wrote to you on 10 May last year on behalf of The Knightsbridge Association which supports our campaign.

Unexpected delay to the proposed new EU Directive on Air Pollution

The Common Position on the proposed new EU Directive on Air Pollution has still not been published ahead of a Second Reading in the European Parliament even though the European Parliament voted on the First Reading on 25 September 2006 and the Council of Ministers agreed its position in respect of the proposed legislation on 23 October 2006. Precedent suggests that the text would normally have been published several months ago.

We are concerned about this delay for several reasons:

1. the new Directive represents a welcome step in rationalising and making more transparent the law for air pollution compared to the current situation with some five EU Directives involved;
2. the current delay may already be enough to mean that the new EU Directive would not come into force until 2008 with the consequence, currently, that some of the proposed new deadlines for meeting EU Legal Limits would slip by a year (since they are currently designed to come into force a fixed number of years after the implementation of the new Directive);
3. as the Intergovernmental Panel on Climate Change (IPCC) made clear in the Working Group III report, titled "Mitigation of Climate Change" and published on 4 May 2007 as part of its 4th Assessment report, in its Summary for Policymakers in paragraph 24 on page 31:

"Governments have a crucial supportive role in providing appropriate enabling environment, such as, institutional, policy, legal and regulatory frameworks, to sustain investment flows and for effective technology transfer – without which it may be difficult to achieve emission reductions at a significant scale".

This recommendation was categorised as "high agreement, much evidence" which you will know is the highest of nine categories used by the IPCC to communicate the importance and certainty of a recommendation.

The delay means that the UK and other countries, which are currently revising their long term air quality strategies (and in the UK considering a Climate Change Bill) are doing so against the background of the "old" regime rather than an unambiguous new regime. As a result, the UK Government may, mistakenly, continue to exclude the treatment of air quality

from the Climate Change Bill; and

4. finally, it creates an impression in respect of Air Pollution that air quality is the “poor relation” of climate change when, as you have emphasised, some 350,000 European citizens die prematurely every year from particulate matter alone and ozone may be responsible for another 20,000 premature deaths.

Question 1: Please will you explain the reasons for the delay in the Second Reading of the proposed new European Union (EU) Directive on Air Pollution and give reassurances about the likely consequences of that delay? We would welcome please your reassurance and any comments also in respect of the four issues raised above.

At least the “Highest Common Denominator” compromise in new EU Directive

The Campaign for Clean Air in London, was disappointed by aspects of the stances taken by each of the Council of Ministers and the European Parliament in their “votes” late last year on the proposed new EU Directive on Air Pollution. In particular, we were disappointed by the possibility of long further delays and/or time extensions being considered when the current earliest dates for compliance were set in 1999 legislation as January 2005 and January 2010 for PM₁₀ and NO₂ respectively. In the case of NO₂ we were shocked to see the European Parliament voting to weaken existing legal protections. We have therefore been campaigning in London for action to be taken to meet the current EU Legal Limits urgently, by close to the original dates and at the latest sustainably by no later than the London 2012 Summer Olympics.

As the facilitator of the Second Reading by the European Parliament on the proposed new EU Directive on Air Pollution, please will the European Commission seek a compromise between the European Parliament and the Council of Ministers that represents at least the “Highest Common Denominator” of their respective formal positions in 2006 i.e. the better protection for citizens offered in respect of each different position taken in their formal “votes” at the end of 2006.

In the hope that it might make the process and outcome as simple and transparent as possible, we have produced an “EU Directive: Air Pollution Scorecard” that summarises the positions for PM₁₀, PM_{2.5} and NO₂ as taken by each of the WHO, current EU legislation and then the European Parliament and the Council of Ministers based on their “votes” last year (attached as a Table). In respect of each item, we have recorded the “Mean”, “Exceedances”, “Earliest date required for compliance”, “Justification for a time extension” and the “Final backstop date” (i.e. the date after which no further derogations or time extensions are allowed) as the key elements.

Where, as mentioned earlier, the timetable only begins once the new EU Directive is implemented, we have made the following assumptions:

- a) the new Directive is implemented in 2007;
- b) the first period can begin only on 1 January of the year after implementation;
- c) the three years or three plus three years extensions run from b. above;
- d) Member States are required to report breaches of EU Legal Limits by 30 September in respect of the previous calendar year; and
- e) the European Commission can only begin enforcement proceedings against Member States after d. above.

Clearly, on the above basis, a year would be “lost” if implementation of the new Directive is delayed from late 2007 to early 2008.

We plan to publish a final version of the scorecard after the Second Reading based on the actual form of the new legislation with a view to showing how positively the result compares to the Highest Common Denominator and therefore which of the two “sides” seems to have been the most constructive. We may also publish details of the voting behaviour of the political parties after the Second Reading as we did after the First Reading.

There are four further points that concern us in respect to the current form of the EU Directive on Air Pollution, particularly if there is a risk of delay now into 2008:

1. please seek in the Second Reading for any deadlines for meeting EU Legal Limits that would be delayed a year by the implementation of the Directive slipping, unexpectedly, from 2007 to 2008 (if it does), to be brought forward commensurately (i.e. expected to be one year) so that there is no overall delay in protecting Europe’s citizens (e.g. in relation to meeting EU Legal Limits for PM₁₀);
2. where “upfront” monitoring is needed to set baselines for determining compliance (or otherwise) with Exposure Reduction EU Legal Limits for PM_{2.5} by 2020, please argue against any postponement of the 2020 date for any reason. There are several ways in which the 2020 targets could be calculated even with a delay in the implementation of the new Directive such as:
 - i. setting a baseline based on average levels of PM_{2.5} in 2009 and 2010 only with the final period remaining 2018, 2019 and 2020;
 - ii. setting a baseline based on average levels of PM_{2.5} in 2009, 2010 and 2011 with the final period remaining 2018, 2019 and 2020 and leaving the percentage change required at 20%;
 - iii. as (ii) above but making it 25% (say) to allow for the European Commission’s best estimate of the change in air pollution levels between an annual average over 2008, 2009 and 2010 and that over 2009, 2010 and 2011;
 - iv. slip the first three year period by six months not 12 months perhaps combined with one of the above approaches; or
 - v. the Environment DG could issue provisional guidance to Member States now in respect of the form of pollution monitoring that is almost certainly going to be required. In this respect, any responsible Member State should be well advanced in planning and/or implementation already.

No doubt, other mechanical solutions are also possible that would achieve the desired “output”;

3. we remain deeply concerned by the proposed move to “Exposure Reduction” where the lives of those who live in “hot spots” may be compromised while air pollution is reduced for those who already have clean air. Would you please comment on how such an approach can be reconciled with environmental justice and the basic human right of free access to clean air of an acceptable quality?;
4. finally, and most importantly, given that the new EU Directive on Air Pollution has been in contemplation since 2005 (and/or earlier), please encourage the Council of Ministers and the European Parliament to consider whether they still require the long additional delays they sought in the second half of 2006. Anything they are willing to do above and beyond the “Highest Common Denominator” would be most welcome and would save lives –

even if it is shortening only proposed “Final backstop dates”.

Question 2: Please will the Environment DG seek to achieve, as facilitator for the Second Reading, at least the “Highest Common Denominator” compromise between the position taken formally last year by the Council of Ministers and the European Parliament in respect of that Directive? Please would you ask your staff to tell us if we have made any mistakes in the EU Directive: Air Pollution Scorecard? Finally, we would welcome please your comments in respect of the four issues raised above.

Enforcing current EU Legal Limits for PM₁₀

The Campaign for Clean Air in London considers that enforcement is an important and necessary element of any effective legislative framework. We do not understand why infringement action has not yet been taken against Member States that breached EU Legal Limits for PM₁₀ in 2005 when no derogations are possible in respect of the PM₁₀ legal breaches. We urge the European Commission to commence the infringement process immediately in respect of 2005 legal breaches (and for 2006 legal breaches as soon as sufficient information has been submitted by Member States).

As you know, London has very serious air pollution problems. The Mayor of London has estimated, for example, that some 1,031 people died prematurely in London in 2005 due to particulate matter (PM₁₀) exposure which is more than four times the number that died from road traffic accidents. In a consultation document published at the end of last year, in connection with the proposed Low Emission Zone, Transport for London (TfL) noted that 1,370,000 people in London would be exposed to an annual mean level of nitrogen dioxide (NO₂) of over 40 µg/m³ in 2008 unless action is taken to improve air quality.

Tables showing monitoring stations where the UK breached EU Legal Limits for PM₁₀ can be found for 2005 and 2006 respectively at:

2005

Annual mean (not to be greater than 40 µg/m³):

http://www.airquality.co.uk/archive/data_and_statistics.php?f_exceedence_id=S3&f_year=2005&f_network_id=Array&f_group_id=4&f_region_reference_id=1&f_sub_region_id=9999&f_output=screen&f_parameter_id=GE10&action=exceedence3&go=Go

24-hour mean (50 µg/m³ not to be exceeded 35 times):

http://www.airquality.co.uk/archive/data_and_statistics.php?f_exceedence_id=E21&f_year=2005&f_network_id=Array&f_group_id=4&f_region_reference_id=1&f_sub_region_id=9999&f_output=screen&f_parameter_id=GE10&action=exceedence3&go=Go

2006

Annual mean (not to be greater than 40 µg/m³):

http://www.airquality.co.uk/archive/data_and_statistics.php?f_exceedence_id=S3&f_year=2006&f_network_id=Array&f_group_id=4&f_region_reference_id=1&f_sub_region_id=9999&f_output=screen&f_parameter_id=GE10&action=exceedence3&go=Go

24-hour mean ($50 \mu\text{g}/\text{m}^3$ not to be exceeded 35 times):

http://www.airquality.co.uk/archive/data_and_statistics.php?f_exceedence_id=E21&f_year=2006&f_network_id=Array&f_group_id=4&f_region_reference_id=1&f_sub_region_id=9999&f_output=screen&f_parameter_id=GE10&action=exceedence3&go=Go

You will see on these sites that Marylebone Road breached the EU Legal Limit annual mean in 2005 and to a greater extent in 2006. Bradford, Camden and Marylebone Road breached EU Legal Limits for the number of daily exceedances in 2005 and they were joined by Glasgow, Port Talbot (which was on the margin) and Scunthorpe Town in 2006. Amongst other things, these outcomes show a consistent and worsening trend for particulate matter in the UK. Furthermore, given that these sites are representative of their cities, there are clearly many people adversely affected by the air pollution problems.

In respect of 2007, according to unratified data published on the excellent London Air Quality Network, seven pollution monitoring stations in London (including Marylebone Road) have already breached the EU Legal Limit for the number of daily exceedances for PM₁₀. The results for Marylebone Road in 2007 can be found at:

<http://www.londonair.org.uk/london/asp/publicstats.asp?region=0&bulletin=&site=M Y1&postcode=&statyear=2007&mapview=all&objective=All>

We do not understand:

1. why enforcement action has not yet been taken place in respect of 2005;
2. how such a position is consistent with environmental justice and the human rights of those exposed to dangerous levels of air pollution;
3. how those with a duty to work towards the EU Legal Limits can be properly fulfilling their responsibilities; or
4. how this position can be consistent with the requirement not to make matters worse.

Furthermore, given the current availability of technologies, such as engines meeting Euro IV emission standards, and road pricing mechanisms in London we do not understand how the United Kingdom generally can be deemed to be making “all reasonable efforts” to achieve EU Legal Limits (which we understand is expected to be a “test” for a derogation or time extension from meeting EU Legal Limits for PM₁₀ after the implementation of the new Directive).

Against this background, we are aware of a Petition lodged with the European Parliament Committee on Petitions by the West London Residents Association (representatives of which are copied on this letter) in respect of serious breaches of EU Legal Limits for PM₁₀ in Earls Court Road. As far as we are aware, a response is awaited from the Committee.

Question 3: Given all the above, please will the European Commission ask the European



Court of Justice under Article 226 of the European Community Treaty to commence enforcement action against the Member States that breached EU Legal Limits for PM10 in 2005 (and subsequently in respect of 2006)? Finally, we would welcome please your comments in respect of the four issues raised above.

We recognise that such infringement action may be required against more than 20 countries and that it may be time consuming and demanding but we believe that it is essential in order to maintain the credibility of EU legislation on Air Pollution – particularly against the background of worrying signs in other areas (see the section on unexpected delays above). The enforcement action could take place, if necessary, in parallel with efforts to achieve at least the Highest Common Denominator position in respect of the new EU Directive on Air Pollution and then any abatement plans to be agreed under the new legislation.

Respectfully, if the European Commission does not act in the way we are requesting it will raise serious questions about the likelihood of any EU enforcement related to Air Pollution whether for air quality, for carbon dioxide (CO₂) emission targets for cars or in respect of climate change. Please set an example now in respect of air quality that will reassure European citizens about their future.

Thank you for taking seriously our concerns about air pollution in London and giving the issues we raise your particular attention. We recognise that you are already taking many steps that will improve air quality across Europe.

We look forward to hearing from you (at the email address below).

With best wishes.

Yours sincerely

Simon Birkett
Principal Contact
Campaign for Clean Air in London

Enc: European Union Directive: Air Pollution Scorecard

By hand:
Winston Fletcher, Chair, The Knightsbridge Association
Carol Seymour-Newton, Honorary Secretary, The Knightsbridge Association

Cc:
President Barroso



David Miliband, Secretary of State for Defra
Marianne Klingbiel, Head of Unit, Air Quality, Environment DG
Ken Livingstone, Mayor of London
Sian Berry, Principal Speaker and Green Party candidate for Mayor of London
John Bird, Independent candidate for Mayor of London

ORGANISATIONS

Amenity Societies
Helen Ainsworth, EU and International Air Quality, Defra
Jenny Bates, London Regional Campaigns Co-ordinator, Friends of the Earth
James Bidwell, Chief Executive, Visit London
John Brewster OBE, Chairman, Port Health and Environmental Services Committee, Corporation of London
Patricia Brown, Chief Executive, Central London Partnership
Robert Buxton, Deputy Chairman, West London Residents Association
Sarah Dudgeon, National and Local Air Quality, Defra
Nick Fairholm, Transport for London
David Higgins, Chief Executive, Olympic Delivery Authority
Tim Hockney, Executive Director, London First
Professor Frank Kelly, Kings College London
Dr Michal Krzyzanowski, Regional Adviser, Air Quality and Health, WHO
Sarah Legge, GLA Principal Policy Adviser – Air Quality
Blake Ludwig, Campaign Director, Alliance Against Urban 4x4s
Professor Bob Maynard, Health Protection Agency
Paul McLoughlin, UK General Manager, Zipcar
Philip Mulligan, Acting Chief Executive, National Society for Clean Air and Environment
Derek Picot, Chairman, The Knightsbridge Business Group
Dr Gordon Taylor, Chairman, West London Residents Association
Dr Martin Williams, Head of Air and Environment Quality Division, Defra

LEADING POLITICIANS

Peter Ainsworth MP, Shadow Secretary of State, Defra, Conservative
The Rt. Hon. Douglas Alexander MP, Secretary of State, Department for Transport, Labour
Greg Barker MP, Shadow Minister for the Environment, Conservative
Ben Bradshaw MP, Minister for Air Quality, Labour
Alistair Carmichael MP, Shadow Transport Secretary, Liberal Democrat
Mrs Gwyneth Dunwoody MP, Chair of the Transport Committee, Labour
Mark Field MP, Conservative
Chris Grayling MP, Shadow Secretary of State for Transport, Conservative
Chris Huhne MP, Shadow Environment Secretary, Liberal Democrat
Ian Pearson MP, Defra, Minister for Climate Change, Labour
The Rt. Hon. Sir Malcolm Rifkind QC MP, Conservative
Tim Yeo MP, Chairman Environmental Audit Committee, Conservative
Gerard Batten MEP, London, Independence
John Bowis MEP, London, Conservative
Chris Davies MEP, Liberal Democrat
Robert Evans MEP, London, Labour
Mary Honeyball MEP, London, Labour
Syed Kamall MEP, London, Conservative
Ms Jean Lambert MEP, London, Green Party



Baroness Ludford MEP, London, Liberal Democrat
Linda McAvan MEP, Labour
Claude Moraes MEP, London, Labour
Charles Tannock MEP, London, Conservative
Angie Bray AM, Leader of the Conservative Group, GLA
Tony Arbour AM, Conservative
Richard Barnes AM, Conservative
Robert Blackman AM, Conservative
Brian Coleman AM, Conservative
Roger Evans AM, Conservative
Elizabeth Howlett AM, Conservative
Bob Neill AM, Conservative
Andrew Pelling AM, Conservative
Jenny Jones AM, Leader of the Green Group, GLA
Darren Johnson AM, Chair of the Environment Committee, GLA, Green
Len Duvall AM, Leader of the Labour Group, GLA
Jeanette Arnold AM, Labour
John Biggs AM, Labour
Nicky Gavron AM, Labour
Joanne McCartney AM, Labour
Valerie Shawcross AM, Labour
Murad Qureshi AM, Labour
Mike Tuffrey AM, Leader of the Liberal Democrat Group, GLA
Dee Doocey AM, Liberal Democrat
Sally Hamwee AM, Liberal Democrat
Geoff Pope AM, Liberal Democrat
The Lord Tope, AM, Liberal Democrat
Peter Hulme Cross AM, One London Group, GLA
Damian Hockney AM, One London Group, GLA
Councillor Sir Simon Milton, Leader of the Council, WCC, Conservative
Councillor Alan Bradley, Chair, Go Green Board, WCC, Conservative
Councillor Merrick Cockell, Leader of the Council, RBKC, Conservative
Councillor Daniel Moylan, Deputy Leader, RBKC, Conservative
Councillor Frances Blois, WCC, Conservative
Councillor Tony Devenish, WCC, Conservative
Councillor Philippa Roe, WCC, Conservative Councillor
Dr Iain Hanham, RBKC, Conservative
Councillor Margot James, RBKC, Conservative
Councillor Mrs Shireen Ritchie, RBKC, Conservative

LOCAL GOVERNMENT OFFICIALS
Rebecca Brown, Environment Quality Unit, RBKC
Guy Denington, Team Manager, Environment Quality Unit, RBKC
Martin Low, Director of Transportation, WCC
Mike LeRoy, WCC
Mahmood Siddiqi, Chief Traffic Engineer, RBKC

EUROPEAN DIRECTIVE: AIR POLLUTION SCORECARD

The Highest Common Denominator is the better of each position in protecting citizens

Note: Asterisked dates assume that the new EU Directive comes into force in 2007

	WHO recommendations	Current EU legal limits (set in 1999)	European Parliament	Council of Ministers	Outcome in final legislation=?
Nitrogen dioxide (NO₂)					
Mean	40 µg/m ³ annual mean	40 µg/m ³ annual mean	40 µg/m ³ annual mean	40 µg/m ³ annual mean	
Exceedances	200 µg/m ³ 1-hour mean	200 µg/m ³ 1-hour mean not to be exceeded more than 18 times per year	200 µg/m ³ 1-hour mean not to be exceeded more than 18 times per year	200 µg/m ³ 1-hour mean not to be exceeded more than 18 times per year	
Earliest date required for compliance		January 2010	January 2010	January 2010	
Justification for a time extension		No derogations or time extensions allowed	No justification needed: the deadline for compliance is postponed until January 2014* for all zones in all Member States without conditions	Demonstrate, in the zone for which the time extension is sought, that all appropriate measures have been taken and background concentrations show a downward trend. The European Commission has 9 months to object	
Final backstop date		January 2010	January 2014* (plus the option of 2 more years if needed). This is a decrease in current public protection.	January 2015*	

EUROPEAN DIRECTIVE: AIR POLLUTION SCORECARD

The Highest Common Denominator is the better of each position in protecting citizens

Note: Asterisked dates assume that the new EU Directive comes into force in 2007

	WHO recommendations	Current EU legal limits (set in 1999)	European Parliament	Council of Ministers	Outcome in final legislation=?
Coarse particulate matter PM₁₀					
Mean	20 µg/m ³ annual mean	40 µg/m ³ annual mean	40 µg/m ³ until January 2010 and 33 µg/m ³ thereafter	40 µg/m ³ annual mean	
Exceedances	50 µg/m ³ 24-hour mean	50 µg/m ³ 24 - hour mean not to be exceeded more than 35 times per year	50 µg/m ³ 24 - hour mean not to be exceeded more than 35 times per year and from January 2010 onwards up to 55 days exemption at 33 µg/m ³	50 µg/m ³ 24 - hour mean not to be exceeded more than 35 times per year	
Earliest date required for compliance		January 2005	Unchanged but subject to time extensions of 3 + 3 years after the entry into force of the new Directive	Unchanged but subject to time extensions of up to 3 years after the entry into force of the new Directive	
Justification for a time extension		No derogations or time extensions allowed	Must show: that objective conditions make it impossible to meet the EU Limit Value; and a Plan to indicate how EU Limit Values will be met within the new deadline. The European Commission has 9 months to object. Note: these conditions are stricter than for NO ₂	Same as European Parliament position	
Final backstop date		January 2005	Second derogation possible until January 2014*	January 2011*	

EUROPEAN DIRECTIVE: AIR POLLUTION SCORECARD

The Highest Common Denominator is the better of each position in protecting citizens

Note: Asterisked dates assume that the new EU Directive comes into force in 2007

	WHO recommendations	Current position	European Parliament	Council of Ministers	Outcome in final legislation=?
Fine particulate matter (PM_{2.5})					
European Union Legal Limits i.e. a "Cap"					
Mean	10 µg/m ³ annual mean	None	20 µg/m ³ annual mean	25 µg/m ³ annual mean	
Exceedances	25 µg/m ³ 24-hour mean		20 µg/m ³ 24 - hour mean "target value" from January 2010 onwards binding from January 2015 onwards	25 µg/m ³ 24 - hour mean "target value" from January 2010 onwards binding from January 2015 onwards	
Earliest date required for compliance		None	January 2015	January 2015	
Justification needed for a time extension		Not applicable	None possible beyond January 2015	None possible beyond January 2015	
Final backstop date		None	None	None	
European Union: Exposure Reduction Target					
It is currently proposed that levels of PM _{2.5} should be reduced by 20% over the population overall. The starting level is due to be measured as an average of calendar years 2008, 2009 and 2010 with the end period being measured as an average of calendar years 2018, 2019 and 2020.					