M 1 K 15.5714

Bavarian administrative court Munich

In the name of the people

In the administrative dispute

Verkehrsclub Deutschland e.V.
Represented by its Management Board
Wallstr. 58, 10179 Berlin

(Plaintiff)

Counsel:
Dr. Geulen and Dr. Klinger, attorneys at law
Schaperstr. 15, 10719 Berlin

v.

The Free State of Bavaria

Represented by
The Bavarian State Ministry for the
Environment and Consumer Protection
Rosenkavalierplatz 2, 81925 Munich

(Defendant)

Joined:
Federal State Capital Munich
Town Hall
Represented by the Lord Mayor
Marienplatz 8, 80331 Munich

Counsel:
Messerschmidt – Dr. Niedermeier
und Partner PartmbB, attorneys at law
Prinzregentenplatz 21, 81675 Munich

for

Exceeding the limits of the 39th BImSchV [Federal emission protection regulations] in Munich

The Bavarian Administrative Court, Munich, 1st division
Sitting in the persons of Administrative Court Chairman Breit,
Administrative Court justice Dr. Strahler
Justice Dr. Steiner
Honorary justice Dr. Hoppe
Honorary justice Märkl

Without further oral hearing

Hereby gives

Judgment

On 21 June 2016

As follows:

I. The Defendant is ordered to amend the air quality plan for the State Capital of Munich such that it includes the measures as required to achieve the average NO_2 limit measured over a calendar year of 40 µg/m^3 in the Munich city area.

II. The Defendant and joined party are ordered to pay half the costs in the case each.

III. The order as to costs is enforceable immediately. The distrainee concerned may avert the enforcement by furnishing security or lodging a deposit to the value of the amount enforceable unless the Plaintiff furnishes security to the same value first.

Facts of the case

The Plaintiff, an environmental protection organisation recognised under § 3 of the law on supplementary regulations on remedies in law in environmental matters under EC Directive 2003/35/EC (Environmental Appeals Act – UmwRG) has applied that the Defendant be ordered to amend the air quality plan for the Federal State capital Munich with a view to adding further measures to it to meet the emission limits for nitrogen dioxide (NO_2).

An air quality plan was first produced for the joined party's area on 28 December 2004. This plan and its database were raised in the first update of October 2007, the second update of August 2008 and the fourth update of September 2010. The third update of April 2012 includes involving the surrounding area. The fifth update to the air quality plan entered into force for the joined party's area in May 2014 and the sixth update in December 2015,

On 18 December 2015, the Plaintiff brought an action before the Bavarian administrative court, applying

> That the Defendant be ordered to amend the air quality plan for the Federal State Capital Munich such that it includes the measures required to comply with the annual average value for NO_2 of 40 µg/m^3 in the Munich city area as quickly as possible.

It claimed capacity to sue as a recognised environmental protection organisation, and that the NO_2 limit of 40 µg/m^3 on average over a year which should have been observed since 1 January 2010 was being exceeded in many places in the city area. It said the Defendant was failing to meet its obligations under § 47 para. 1 clause 1 of the law on protection against the harmful environmental effects of air pollution, noise, vibration and similar processes (BimSchG [Federal Emissions Protection Act]) in conjunction with § 27 para. 2 of the Thirty-Ninth Regulations Implementing the Federal Emissions Protection Act, regulations on air quality standards and emission limits (39th BImSchV), and that the action taken to date was not liable to minimise breaches of the limits.

The Defendant applied that

The action be dismissed

It said that all the air quality plan listed all the measures which could be implemented. Considering further measures was the subject of measure M 1 of the sixth update, which focused particularly on measures which were possible in law, traffic and spatial terms and their air quality efficiency. The measures the Plaintiff demanded had been considered and assessed on a number of occasions. The problems with the NO_2 situation at present were caused by diverging EU emission and concentration limits regulations. The emission limits for Euro 6 diesel vehicles were not being met when actually operating vehicles, plus there were lawful and unlawful manipulations in reducing exhaust emissions from diesel vehicles. To resolve these problems, what was needed was effective demands on diesel vehicle emissions at European level. As things currently stood, the European instruments would not be effective until the year 2020. As long as the politicians failed to take basic decisions, emission levels could not be complied with in Munich.

The joined party applied that

The action be dismissed.

It said the action was inadmissible on the grounds of lack of privity alone, but unfounded in any case. The maximum concentrations occurred at the test station on Landshuter Allee because of the building structure, traffic levels and meteorological conditions. In the side roads which gave onto Landshuter Allee, it could be assumed NO_2 levels would be below the annual average limit from a distance of around 50 m: so NO_2 levels measured on Landshuter Allee could not be transposed either to the Mittlerer Ring as a whole or the Munich city area. If the NO_2 limit was to be complied with in the worst affected road sections of the Mittlerer Ring in the near future, either current traffic levels on the Mittlerer Ring would have to be reduced by at least 80% or all goods traffic would have to be banned and all diesel vehicles replaced by petrol vehicles into the bargain. It said the minimum effects of emission limits set at European level for vehicle emissions for Euro-5 and Euro-6 exhaust standards had not happened as expected. The acute significance of traffic-based toxins and NO_2 in particular were due not to an increase in air pollution but to the limits being reduced as scheduled, so that exceeding the limits did not by any means mean that the risk of harm due to airborne toxins had increased. The burden of road traffic emissions could not be overcome without tightening up European product standards and monitoring them properly. European and Federal law standards on air quality plans would show they conflicted conceptually with European law. Product law provisions for motor vehicles for diesel vehicles would only bring improvements about in the long term. As part of the joined party's air quality plans, comprehensive consideration had been given to how airborne pollution levels could be reduced and appropriate measures had been taken.

For further details see the report of 10 May 2016 and the Court's files.

Grounds for the decision

The ruling may be given without any further oral hearing as the parties have accepted it, § 101 para. 2 of Administrative Court regulations (VwGO). The action is successful, as it is admissible (I.) and founded (II.).

I. The action is admissible.

1. For failing to issue an air quality plan in breach of obligations, a general action for performance is the appropriate action (cf. Munich Administrative Court [VG] ruling 09.10.2012 – M 1 K 12.1046 – juris para. 18; BayVGH ruling 18.05.2006 – 22 BV 05.2462 –juris para. 15; BVerwG ruling 05.09.2013 – 7 C 21.12 – juris para. 18).

2. The Plaintiff has capacity to sue as an environmental protection organisation recognised under § 3 UmwRG.

   The capacity to sue follows from § 42 para. 2 clause 2 VwGO, which also applies in actions for performance generally (*Sodan* in *Sodan/Ziekow*, VwGO, 4th edition 2014, § 42 para. 62, 371). The Plaintiff can argue that failing to update the air quality plan sufficiently which fails to meet the requirements of § 47 para. 1 BImSchG in conjunction with § 27 of the 39th BImSchV is a breach of its rights, as, under § 47 para. 1 BImSchG, it is not only individuals who are affected directly but also environmental protection organisations which are recognised under § 3 UmwRG who have the right to demand that an air quality plan be drawn up which meets the requirements of the air quality law. While the Plaintiff's health may not be affected as an entity in law, and it does not claim that a subjective right to compliance with air quality limits which follows from guaranteeing its physical integrity has been breached, according to established definitions in subjective law, the same would apply if air quality law serves to protect the environment as such and hence the public interest. On the other hand, Union law offers an extended construction of the following subjective positions in air quality law. In view of the European Court of Justice (ECJ)'s decision of 8 March 2011 (C-240/09 – juris, NVwZ 2011, 673 et. seq.), § 47 para. 1 BImSchG must also be interpreted to mean that environmental organisations also have the right to demand that the regulations be complied with when producing an air quality plan. According to the received understanding of the concept in subjective law, this would also apply insofar as air quality law serves to protect the environment as such and hence the public interest. On the other hand, Union law offers an extended interpretation of the subjective position in law which follows from air quality law. In the light of the European Court of Justice (ECJ)'s decision of 8 March 2011 (C-240/09 – juris, NVwZ 2011, 673 et seq.), § 47 para. 1 BImSchG is to be construed to mean that environmental organisations also have the right to demand that the compelling rules of air quality law be complied with. On the other hand, not every environmental organisation has the right to ensure that the rules are complied with when producing an air quality plan. Environmental organisations cannot have subjective material rights unless they are not merely part of the general public but of the 'public affected'. This is to be affirmed in the case of non-governmental organisations who commit themselves to protecting the environment and which meet all the conditions of domestic state law. The Plaintiff meets these conditions as it is recognised under § 3 UmwRG. This rule may be taken from the basic decision that only the environmental organisations which are recognised under this should be entitled to bring actions for breaches of the provisions of law which protect the environment in court. No further conditions can be seen for the right granted these environmental organisations (on capacity to sue in detail see BVerwG judgment of 05.09.2013 – 7 C 21.12 – juris paras. 17-50).

II. The action is also founded.

The Plaintiff is entitled to bring an action against the Defendant to amend the air quality plan for the Federal State Capital Munich to the effect that this must include the measures required to comply with the limit for NO_2 determined over the course of a calendar year of 40 $\mu g/m^3$.

Under § 47 para. 1 clause 1 BImSchG, which transposes Art. 23 para. 1 clause 1 of Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe into national law, the competent authority must draw up an air quality plan if emission limits set by regulations issued pursuant to § 48 a para. 1 BImSchG, including tolerances, are breached. Under § 47 para. 1 clause 3 BImSchG, the measures taken under an air quality plan must be suited to ensuring that a breach of emission limits which are already to be complied with is kept as short as possible.

1. Under Art. 13 para. 1 in conjunction with Annexe XI letter B of Directive 2008/50/EC, which § 48a para. 1 BImSchG in conjunction with § 3 para. 2 of the 39th BImSchV transposes in national law, the emission limit as determined for NO_2 over a calendar year is 40 µg/m^3. Under Art. 13 para. 1 in conjunction with Annexe XI letter B of Directive 2008/50.EG, this limit was due to be complied with by 1 January 2010.

2. NO_2 levels in Munich (annual average) exceeded the emission limit as determined over the calendar year of 40 µg/m^3 at the testing stations on Landshuter Allee (83 µg/m^3) and Stachus (62 µg/m^3). The same applied in the calendar year 2015, when the measured values were 84 µg/m^3 at the testing station on Landshuter Allee and 64 µg/m^3 at the Stachus testing station (Federal Environmental agency report, "[Nitrogen dioxide (NO_2) in 2015]" http://www.umweltbundesamt.de/sites/default/files/medien/358/dokumente/no2_2015_1.pdf. p.5). For the joined party to argue that the emission limit was complied with at some distance from the testing station on Landshuter Allee does not alter the fact that the limit was exceeded at both these testing stations and hence that the conditions of Art. 13 para. 1 in conjunction with Annexe XI letter B of Directive 2008/50/EC and § 3 para. 2 of the 39th BImSchV were not met.

3. As permitted emission limits were exceeded, it follows from Art. 23 para. 1 clause 2 of Directive 2008/50/EC, § 47 para. 1 clause 1 and clause 3 BImSchG and § 27 para. 2 clause 1 (1) of the 39th BImSchV that the Defendant is bound to include suitable measures in the air quality plan to keep the non-compliance period *as short as possible.* Suitable measures should therefore be taken to comply with the limits *as quickly as possible*.

   For the joined party to argue that exceeding the NO_2 limit does not mean that there is any increase in risk due to airborne toxins but is because the limits concerned were reduced does nothing to alter this obligation: for the obligation to draw up an air quality plan with suitable measures arises out of the statutory regulations as cited and the current breach of the limits which apply. This turns on exceeding the limit per se, not whether air pollution in the joined party's area of the city is increasing or falling.

4. The sixth update of the air quality plan fails to meet the requirements as described in 3: so the Defendant is still bound to produce an air quality plan to meet the limits as soon as possible.

a) By the Defendant's own admission, the measures in the sixth update are not suited to complying with the limits as quickly as possible. It is a minimum requirement for a measure to be suitable that the Defendant who is responsible for producing the air quality plan considers it suitable itself. The sixth update of the air quality plan fails to meet this requirement, as the Defendant itself does not expect emission limits to be met at the Landshuter Allee testing station before 2030 and at the Stachus testing station before 2025 without taking extra measures (sixth update of air quality plan p. 76).

b) The measures in the sixth update of the air quality plan are not suited to complying with the limits as set as soon as possible.

   aa) The law requires the measures contained in an air quality plan to be suited to keeping the non-compliance period as short as possible. 'As quickly as possible' here does not mean immediately; but efforts must be made to achieve air quality objectives as soon as possible (cf. also BVerwG judgment of 05.09.2013 – 7 C 21.12 – juris para. 59). For the Defendant to forecast in the sixth update of the air quality plan (p. 76) that, unless extra measures were taken, the average annual emission limit at the Landshuter Allee testing station was not expected to be complied with before 2030 and at the Stachus testing

station before 2025 does not qualify as meeting what the law requires. Rather, the case on the Munich air quality plan decided on 9 October 2012 (M 1 K 12.1046 – juris) itself did not consider meeting the limits by 2015 and/or 2020 as 'as quickly as possible' any longer.

(1) In terms of proportionality, the problems which have become known in connection with diesel motor vehicle emissions do not mean that achieving the emission limits from 2025/2030 can be regarded as 'as quickly as possible' in the legal sense. It is known that diesel vehicles cannot meet Euro-5 and Euro-6 standards when actually driven; and some diesel vehicle makers have evidently influenced their vehicle software such that those vehicles can recognise when they are being tested and so meet Euro-5 and Euro-6 standards when they are tested but not when actually being driven.

These facts are immaterial to the obligation to meet the limits, as the airborne toxin limits in European law, are based on Art. 13 para. 1 in conjunction with Annexe XI letter B of Directive 2008/50/EC and cannot therefore be varied when applied in national law. So the Defendant and joined party cannot avoid their obligation to use effective air quality plans to meet emission limits as quickly as possible by arguing that the clean air problem can only be resolved by taking account of what toxins diesel vehicles emit at European level.

On the other hand, the problem of diesel emissions must be borne in mind when deciding what qualifies as 'as quickly as possible'. Under the proportionality principle, it must be borne in mind that the Defendant and the joined party, and also the legislators may assume when setting limits that diesel vehicles also meet Euro-5 and Euro-6 standard requirements when they are actually being used. As the contribution to be expected to reducing toxins cannot now be achieved promptly, we cannot expect the limits to be complied with 'as soon as possible' within the times as originally forecast: so there can be no justification for deferring the matter beyond the year 2030.

Nor does the so-called 'software manipulation' which the Defendant and the joined party also put forward affect the question as to whether the forecasts as described in the sixth update meet the requirements of complying with the limits as quickly as possible, for the forecasts were made independently of the 'software manipulation' which has emerged. The Defendant itself says that estimating how this manipulation is affecting air quality cannot be done until the matter is clarified.

(2) Furthermore, when considering the question of how to comply with the limit 'as quickly as possible', we must also bear in mind that, under Art. 13 para. 1 in conjunction with Annexe XI letter B of Directive 2008/50/EC, complying with the limits has already been mandatory since 2010. The European Commission has already brought an action for treaty breach against the Federal Republic of Germany on the grounds that there are a number of cities in Germany where limits are still being exceeded. And the courts ordered the Defendant to update the air quality plan to include suitable measures to meet the limits as far back as 2012 (VG Munich, judgment of 09.10.2012 – M 1 K 12.1046 – juris).

(3) Seen against this background that, because of the diesel issue, meeting limits as quickly as possible will probably not (now) be achieved by the year 2020 as originally assumed (VG Munich, judgment of 09.10.2012 – M 1 K 12.1046 – juris), while on the other hand protecting valuable assets in law, namely human health and the environment is on the table and exceeding the limits should have been overcome since as long ago as 2010, for the Defendant to predict that the limits cannot be met before 2025/2030 fails to meet the legal requirement of complying with the limits as quickly as possible. The Defendant must add measures to the air quality plan which will enable it to correct the time forecast for meeting the limit in the sixth update considerably downwards.

bb) Even allowing for the principle of proportionality (cf. also VG Hamburg judgment of 05.11.2014 – 9 K 1280/13 – juris paras. 30 et seq.; BVVerwG judgment f 05.09.2013 – 7 C 21.12 – juris para. 59) the Defendant can still include suitable measures to comply with the limit as quickly as possible in the air quality plan (cf. BVerwG of 2.03.2007 – 7 C 9.06 – juris para. 18). For other effective measures are available which would be suited to achieving

compliance with the limit more quickly than the Defendant is endeavouring to do: so the measures in the sixth update of the air quality plan are not effective enough.

(1) While measures M 2 to M 20 in the sixth update of the air quality plan may be able to help meet limits, they are not *per se* measures which would be suited to achieving compliance with limits within the meaning of § 47 para. 1 clause 3 BImSchG, § 27 para. 2 of the 39th BImSchV. Measure M 2 "Adjusting existing environmental area to reduce NO_2 levels" aims to verify that the old requirements to be allowed to drive into the environmental area are being tightened up and is to be realised as soon as the legal conditions are in place. No potential reduction is stated. Even if possibly tightening up the conditions to be allowed to drive into the environmental area goes to the main source of the emissions – diesel vehicles -, measure M 2, which cannot be expected to affect NO_2 levels immediately as it stands, is far too vague to contribute effectively to meeting the limit. Quite apart from the fact that they are overwhelmingly approximate, if only because they fail to specify the potential reductions possible, and given that the main reason that the limit continues to be exceeded is diesel vehicles, measures M 3 a to M 20 cannot effectively contribute to complying with the limits as quickly as possible in such a way that they would be suitable in terms of the requirements of § 47 para. 1 clause 3 BImSchG, § 27 para. 2 of the 39th BImSchV and the Defendant would therefore have met its obligations under law.

(2) Measure M 1 which the Defendant calls the key measure, is defined as 'engaging experts to determine traffic conditions and the effects of traffic control measures with a view to reducing traffic levels in particularly heavily burdened sections and their potential for reducing nitrogen dioxide and other effects on air quality'. It is not suited to complying with the limits as quickly as is possible, not even in conjunction with the other measures as specified in the sixth update of the air quality plan.

The air quality plan itself describes the aim of the opinion in very general terms to the effect that it will examine what can be done in legal, traffic and spatial terms to route and manage traffic and whether this is feasible in practice and how this would affect air quality, particularly in terms of NO_2 levels. No potential reduction is stated, as this will not be determined before the report which is scheduled to be completed in 2017. These abstract general objectives fail to meet the statutory requirements of Art. 23 of Directive 2008/50/EC, § 47 para. 1 BImSchG and § 27 of the 39th BIMSchV, which indicate that effective measures to comply with the limit are required. With a view to protecting health and the environment, if limits are not met, decisive measures will be required to put an end to the breaches as soon as possible (cf. also VG Munich judgment of 10.2012 – M 1 K 12.1046 – juris para. 32 et seq.). Commissioning an expert report is not, however, a measure which could contribute to reducing emissions and hence immediately to meeting the limit. At best, rather, the opinion can serve to prepare for further measures. It may not be suited to meeting the limit in itself as this would require a large number of further uncertain intermediate steps, namely adding specific suitable measures to the air quality plan.

Nor can it be deduced from the working performance specifications which the Defendant has produced on measure M 1 that specific instructions for actual, possibly including traffic limiting measures would be involved. It is not even formally binding. It is neither 'headed' or dated. Nor is it signed, so that we cannot say who wrote the performance specifications. Nor is it clear whether these are binding instructions for an expert or purely non-binding assumptions. Even ignoring the formal defects, however, the performance specifications are still too vague to make measure M 1 decisive in terms of what the law requires. Even considering the principle of proportionality, merely examining 'possible measures' is not enough to meet the limit as soon as possible. The so-called 'functional performance specifications' do not mention any specific traffic limiting measures which would be particularly suited to achieving the limit. There is nothing to indicate whether 'reducing traffic levels' also includes effective (e.g. traffic limiting) measures or merely less effective traffic management measures. While a number of more effective measures such as the city toll or environmental zone are mentioned as examples elsewhere, there are no specific instructions on what measures the expert should review, leaving them totally at liberty on that point and it will only emerge afterwards whether the expert's report even includes effective measures to comply with the limit.

It may be allowed to the joined party that it cannot without an expert report take traffic measures 'at random' so to speak and even impinge massively upon third party rights, given also that air quality plan updates to date have involved traffic restrictions which are relatively far-reaching as far as the joined party is concerned; but an expert investigation would at least have involved considering traffic routing or restriction measures, and would have had to have been commissioned much more promptly to prepare to update the air quality plan. The instructions are not based on any adequate strategy which could have been expected to lead to a catalogue of effective measures being developed.

(3) The Defendant could take measures in fact and in law which go beyond those included in the sixth update. For example, it would be possible without further ado to issue instructions for a specific opinion which names effective measures and puts them up for consideration. And many potentially effective measures could also be taken from what the Plaintiff proposes: the 'blue badge', 'city toll' or traffic restrictions for particularly heavily burdened areas are just some of these. Even temporary measures would be conceivable.

5. In formulating its application, the Plaintiff does not go beyond what is open to it: for, when selecting what measures to take and who they will affect, the authority has room to manoeuvre which regularly prevents it being sued by anyone who is affected by emission limits being exceeded and environmental organisations demanding it takes a particular action, even in this case (cf. Munich administrative court judgment of 09.10.2012 – M 1 K 12.1048 – juris para. 34 with notes). The Plaintiff is not entitled to demand that a specific measure be included in the air quality plan; but, given that limits are still being exceeded, it has the right to demand that the Defendant consider effective measures which are suited to comply with those limits promptly and reduce the values in its clean air strategy further. There are a large number of options which are conceivable over and above the possibilities the Plaintiff mentions like the 'blue plate' or 'city toll'.

6. The conditional applications to produce evidence which the joined party made at the oral hearing on 10 May 2016 are to be dismissed.

a) The application to commission an expert report to show that it may be assumed that average annual NO_2 levels in side streets leading to the Landshuter Allee are below the limit from around 50 m from where they meet Landshuter Allee and that the NO_2 levels recorded on Landshuter Allee as the most heavily polluted point cannot be extrapolated to the Mittlerer Ring [middle ring road] as a whole or to the Munich city area must be dismissed: for the facts to be proven are immaterial to the decision (cf. *Geiger* in *Eyemann*, VwGO, 14th edition, 2014, § 86 para. 25). Even assuming it is true, it changes nothing as to the Plaintiff's action to enforce. For even if the readings on Landshuter Allee are not representative of the Munich city area as a whole, they still show the limits are not being met throughout the city area, so there is an obligation to draw up an air quality plan which includes suitable measures. It is also a fact that it is not only at the Landshuter Allee testing station that the limit is being exceeded, but also at the Stachus testing station: so the Defendant would still be obliged as stated in the ruling even if the readings at the Landshuter station were ignored.

b) The application to commission an expert opinion to show that current traffic levels on the Mittlerer Ring would either have to be reduced by 80% in all or freight traffic would have to be completely banned on the Ring and all diesel cars would also have to be replaced by petrol cars on the Ring if the current NO_2 emission limit were to be met in the area of the most heavily polluted road section of the Mittlerer Ring in the near future must also be dismissed. Assuming the application to produce evidence that the term 'in the near future' should be taken as synonymous with 'as quickly as possible', it would be inadmissible, as this is a term which has to be clarified by the courts. If one assumed in the joined party's favour that, when it says the emission limit will be met 'in the near future', it means it will be meant 'immediately', one might assume that the fact as put in evidence was true, but it would still be immaterial to the decision: for the fact that the only way to comply with the limit immediately would be for the Defendant to take the drastic action it describes shows even more clearly that the air quality plan to be produced must include effective measures if it is to achieve the aim of complying with the limit as soon as possible. At the end of the day, if the Defendant produced this fact in the proceedings, it would not make any difference to them either. Also 'as quickly

as possible' precisely does not mean 'immediately', so the scenario which the Defendant describes in blanket terms would not need to be implemented.

c) The application to commission an expert report to show that, if the toxins which motor vehicle traffic emits, and nitrogen dioxide in particular, foreseeably exceed the limit, that does not mean that the risks due to toxins increases, must be dismissed, as this is also immaterial to the decision. This assertion may be taken as true: for the obligation to produce an air quality plan arises out of the legal requirements in Art. 23 para. 1 clause 2 of Directive 2008/50/EC, § 47 para. 1 BImSchG and § 27 para. 2 clause 1 (1) of the 39th BImSchV on the grounds that current limits are presently being exceeded, not because air pollution would increase in the joined party's city area. It follows that clean air measures are not intended merely to prevent the risks from airborne toxins increasing but precisely to reduce the risks from those toxins which exists, which includes reducing the limits of which the Defendant complains.

d) Lastly, the joined party has applied to obtain an expert opinion to show that the Mittlerer Ring could not be included in the environmental zone in terms of either road traffic law or roads, and that, before including the Mittlerer Ring in the environmental zone, diversionary facilities would have to be created for which Munich has neither the roads nor the space. This application to produce evidence must also be dismissed. Even assuming this assertion were true, it would be immaterial to the decision: given how many effective measures could be considered, merely the impossibility of extending the environmental zone to the Mittlerer Ring does not mean the air quality plan cannot work . Even if none of the effective measures could be taken, it would still be possible for the Defendant to commission a specific expert opinion over and above the inadequate measure M 1 to review and enable expressly stated effective measures, including limiting traffic. Nor can we see why extending the environmental zone should end precisely at the Mittlerer Ring or that no other action would be feasible.

III. The decision as to costs is based on §§ 154 para. 1, para. 3, 162 para. 3 VwGO, and the pronouncement as to the decision as to costs being enforceable on an interlocutory basis follows from § 167 VwGO in conjunction with §§ 708 et seq. of the civil procedural regulations (ZPO).

Appeals

Under §§ 124, 124 a para. 4 VwGO, the parties may apply for **leave to appeal** against this judgment to the **Bavarian Administrative Court Munich** within **one month** of its being served.

Building address: Bayerstrasse 30, 80335 Munich, or
Postal address: P.O. Box 20 05 43, 80005 Munich

stating what judgment is being appealed. Applications should be accompanied by four copies.

The grounds on which an appeal is admissible must be stated within two months of this judgment being served. The grounds must be submitted to the **Bavarian administrative court**

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Postal address in Munich: P.O. Box 34 01 48, 80098 Munich
Building address in Ansbach: Montgelasplatz 1, 91522 Munich

insofar as they have not already been submitted with the application.

The Bavarian Administrative Court will decide whether the appeal is admissible.

In the Bavarian Administrative Court, the parties must have themselves represented by counsel, except in legal aid proceedings in respect of the costs in the case. This also applies to procedural actions which instigate proceedings in the Bavarian Administrative Court. As well as attorneys at law and the professors in law who have been authorised as judges as stated in § 67 para. 2 clause 1 VwGO, the term 'counsel' also includes the persons and organisations as stated in § 67 para. 2 clause 1 VwGO and in §§ 3, 5 RDGEG.

(Signature)	*(Signature)*	*(Signature)*
Breit	Dr. Strehler	Dr. Steiner

Decision

The value at issue is set at EUR 10,000.00
(§ 52 para. 1 Court Costs Act (GKG))

Appeals:

The parties may **appeal** against this decision to the Bavarian Administrative Court, provided the value at issue on appeal exceeds EUR 200.00 or leave is given to appeal. Appeals must be submitted to **the Bavarian Administrative Court** within **six months** of the decision in the main action acquiring force in law or the proceedings being settled otherwise

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If the value at issue is set later than one month before the end of this tie, the appeal may also be brought within one month of the order setting it being served or communicated informally.

Appeals by the parties should be accompanied by copies for the other parties.

(Signature)	*(Signature)*	*(Signature)*
Breit	Dr. Strehler	Dr. Steiner