



Reports of Cases

OPINION OF ADVOCATE GENERAL
KOKOTT
delivered on 12 March 2015¹

Case C-81/14

Nannoka Vulcanus Industries BV

(Request for a preliminary ruling from the Raad van State (Netherlands))

(Environment — Atmospheric pollution — Directive 1999/13/EC — Limitation of emissions of volatile organic compounds — Use of organic solvents in certain activities and installations — Obligations applicable to existing installations — Extension of the transitional period)

I – Introduction

1. Volatile organic compounds and their degradation products may contribute to the creation of ground-level ozone. High ozone concentrations can impair human health and can cause damage to forests, vegetation and crops.² The European Union and its Member States have therefore been endeavouring for some time to limit emissions of volatile organic compounds.

2. The directive on the limitation of emissions of volatile organic compounds³ ('the VOC Directive') aims to prevent or reduce emissions of those compounds from certain installations into the environment, mainly into air. To that end, existing installations that release such emissions were among those required either to comply with certain limit values or to implement a reduction scheme, in principle by 31 October 2007.

3. However, the installation operator must be given an extension of the time-limit (a 'time emission') to implement an emission reduction scheme where substitutes containing little or no solvent are still in development. This request for a preliminary ruling seeks to clarify the conditions under which such an extension is to be granted.

4. Although, in 2010, the VOC Directive was replaced by the Industrial Emissions Directive,⁴ the request for a preliminary ruling is of prospective interest too, since many of the rules concerning time extensions were reproduced in the Industrial Emissions Directive.

¹ — Original language: German.

² — Commission proposal for a Council Directive on limitation of emissions of volatile organic compounds due to the use of organic solvents in certain industrial activities (COM(96) 538 final, paragraph 3).

³ — Council Directive 1999/13/EC of 11 March 1999 on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations (OJ 1999 L 85, p. 1), as amended by Directive 2008/112/EC (OJ 2008 L 345, p. 68).

⁴ — Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ 2010 L 334, p. 17).

II – Legal framework

5. The purpose of the VOC Directive is laid down in Article 1:

‘The purpose of this Directive is to prevent or reduce the direct and indirect effects of emissions of volatile organic compounds into the environment, mainly into air, and the potential risks to human health, by providing measures and procedures to be implemented for the activities defined in Annex I, in so far as they are operated above the solvent consumption thresholds listed in Annex IIA.’

6. Article 4 of the VOC Directive governs the requirements applicable to existing installations:

‘Without prejudice to Directive 96/61/EC, Member States shall adopt the necessary measures to ensure that:

1. existing installations comply with Articles 5, 8 and 9 no later than 31 October 2007;
2. all existing installations must have been registered or authorised by 31 October 2007 at the latest;
3. those installations to be authorised or registered using the reduction scheme of Annex IIB notify this to the competent authorities by 31 October 2005 at the latest;

...’

7. The limitation of emissions is governed by Article 5(2) of the VOC Directive:

‘All installations shall comply with:

- (a) either the emission limit values in waste gases and the fugitive emission values, or the total emission limit values, and other requirements laid down in Annex IIA;
- or
- (b) the requirements of the reduction scheme specified in Annex IIB.’

8. The reduction scheme is laid down in Annex IIB to the VOC Directive:

1. Principles

The purpose of the reduction scheme is to allow the operator the possibility to achieve by other means emission reductions, equivalent to those achieved if the emission limit values were to be applied. To that end the operator may use any reduction scheme, specially designed for his installation, provided that in the end an equivalent emission reduction is achieved. Member States shall report according to Article 11 of the Directive to the Commission about the progress in achieving the same emission reduction, including the experience from the application of the reduction scheme.

2. Practice

In the case of applying coatings, varnishes, adhesives or inks, the following scheme can be used. Where the following method is inappropriate the competent authority may allow an operator to apply any alternative exemption scheme which it is satisfied fulfils the principles outlined here. The design of the scheme shall take into account the following facts:

- (i) where substitutes containing little or no solvent are still under development, a time extension must be given to the operator to implement his emission reduction plans;

- (ii) the reference point for emission reductions should correspond as closely as possible to the emissions which would have resulted had no reduction action been taken.

The following scheme shall operate for installations for which a constant solid content of product can be assumed and used to define the reference point for emission reductions:

- (i) the operator shall forward an emission reduction plan which includes in particular decreases in the average solvent content of the total input and/or increased efficiency in the use of solids to achieve a reduction of the total emissions from the installation to a given percentage of the annual reference emissions, termed the target emission. This must be done on the following time frame:

Time period		Maximum allowed total annual emissions
New installations	Existing installations	
By 31.10.2001 By 31.10.2004	By 31.10.2005 By 31.10.2007	Target emission × 1.5 Target emission

- (ii) The annual reference emission is calculated as follows:

- (a) The total mass of solids in the quantity of coating and/or ink, varnish or adhesive consumed in a year is determined. Solids are all materials in coatings, inks, varnishes and adhesives that become solid once the water or the volatile organic compounds are evaporated.

- (b) The annual reference emissions are calculated by multiplying the mass determined in (a) by the appropriate factor listed in the table below.

...

- (c) The target emission is equal to the annual reference emission multiplied by a percentage equal to:

- (the fugitive emission value + 15), for installations falling within item 6 and the lower threshold band of items 8 and 10 of Annex IIA,
- (the fugitive emission value + 5) for all other installations.'

III – Facts of the main proceedings and request for a preliminary ruling

9. Nannoka Vulcanus Industries BV ('Nannoka') operates an installation for varnishing and coating processes. By decision of 7 October 2010, the College van gedeputeerde staten van Gelderland (Executive Board of the Provincial Committee for the Region of Gelderland) imposed an order requiring Nannoka to discontinue and rectify, on pain of imposition of periodic penalties, its infringement of the national rules implementing the VOC Directive.

10. Nannoka failed to comply with the emission limit values laid down in Annex IIA to the VOC Directive by 31 October 2007, but, according to the information supplied by the referring court, argues that it satisfies the requirements of the reduction scheme set out in Annex IIB because that annex offers the possibility of acquiring an extension beyond 31 October 2007 of the time-limit for implementing the reduction scheme.

11. Nannoka therefore lodged an appeal against the decision of 7 October 2010. The case is now pending before the Raad van State. Although that decision has since been repealed, the order for reference states that Nannoka none the less still has an interest in a substantive assessment of its appeal. According to the order, Nannoka has put forward a *prima facie* case that, as a consequence of the decision, it suffered harm by virtue of the fact that it was obliged to subcontract a portion of its work to another company.

12. The Raad van State has now referred the following questions to the Court of Justice:

- ‘(1) Does it follow from Annex IIB to the VOC Directive that the operator of installations for which a constant solid content of product can be assumed and used to define the reference point for emission reductions, where substitutes containing little or no solvent are still under development, must be given a time extension for the implementation of its reduction scheme, in derogation from the time frame set out in that annex?’

If Question 1 is answered in the affirmative:

- (2) Is particular action on the part of the operator of the installation or authorisation from a competent authority required for the conferring of a time extension for the implementation of the reduction scheme provided for in Annex IIB to the VOC Directive?
- (3) On the basis of which criteria can the length of the time extension provided for in Annex IIB to the VOC Directive be determined?’

13. Written observations have been submitted by the Kingdom of the Netherlands and the European Commission. The hearing held on 26 February 2015 was also attended by Nannoka.

IV – Legal assessment

14. The VOC Directive allows the objective of reducing solvent emissions to be achieved by different methods. The two most important methods are, on the one hand, compliance with emission limit values, in particular by encapsulating installations and filtering exhaust air, and, on the other hand, the use of installation-specific emission reduction schemes (Article 5(2)). One of the features of reduction schemes is that they are more flexible than the application of limit values. They are usually based on the use of substitutes and processes that generate fewer emissions. The request for a preliminary ruling concerns the second method, the use of reduction schemes.

A – The possibility of a time extension (first question)

15. By the first question, the Raad van State wishes to ascertain whether the operator of installations for which a constant solid content of product can be assumed must be given a time extension for the implementation of its emission reduction scheme where substitutes containing little or no solvent are still under development.

16. Technically, the answer to that question can be found in the relevant provision. After all, point (i) of the first paragraph of Annex IIB(2) to the directive provides that a time extension must be given to the operator to implement his emission reduction plans where substitutes containing little or no solvent are still under development.

17. None the less, both the Netherlands and the Commission object to that conclusion. I suspect that their position is based at least in part on the fact that point (i) of the first paragraph of Annex IIB(2) to the VOC Directive contains no express provision limiting any such time extension. Even so, a right to an unlimited time extension could render the VOC Directive nugatory. In this instance, however, both parties rely on other considerations.

1. The view taken by the Netherlands — no time extension beyond 31 October 2007

18. The Netherlands takes a particularly strict view, in that it rejects any time extension beyond 31 October 2007. That is the point in time by which Article 4(1) of, and point (i) of the second paragraph of Annex IIB(2) to the VOC Directive required the emissions of existing installation to be reduced.

19. The Netherlands argues that emission reduction was technically possible even before then. This point was made by the Commission in its proposal for the VOC Directive back in 1996.⁵ Recital 8 in the preamble to the directive also states that, at the time of its adoption in 1999, the necessary substitutes were available or could at least be expected to become available within the coming years.

20. The Netherlands therefore proceeds on the premise that there can be no justifiable need for a time extension beyond 31 October 2007. In accordance with Article 4(1) of the VOC Directive, that is the point in time by which existing installations must comply with the requirements of Article 5, that is to say the limit values laid down in Annex IIA or the reduction scheme provided for in Annex IIB.

21. The Netherlands' view is, however, based only on the legislature's prediction at the time when the VOC Directive was adopted. The Netherlands is not saying that the development of possible substitutes had actually already been concluded by 31 October 2007.

22. Most importantly, however, the Netherlands' position is incompatible with the text of point (i) of the first paragraph of Annex IIB(2) to the VOC Directive. This expressly provides for a time extension. Reference to a time extension is meaningful, however, only if the time-limits laid down in the directive — 31 October 2007 for existing installations — can be extended in the first place. The view taken by the Netherlands, on the other hand, would divest that provision of its prescriptive character and reduce it to a mere explanatory note on the calculation of the time-limits.

23. Such a reinterpretation of the clear provision with respect to time extensions would be at best conceivable if the legislative context or recognisable aims of the measure strongly militated in its favour. Since this is not the case, however, the position taken by the Netherlands is not compatible with the principle of legal certainty.

24. Furthermore, the European Union continued to operate the time extension scheme even afterwards. It is thus also provided for in the Protocol to Abate Acidification, Eutrophication and Ground-Level Ozone,⁶ which, though, like the VOC Directive, adopted back in 1999, was not ratified by the European Union until 2003.⁷

25. Finally, in 2010, the EU legislature once again included with identical wording the possibility of time extensions for the implementation of reduction schemes when it adopted the Industrial Emissions Directive, specifically in Part 5, point 2(a) of Annex VII thereto. It therefore assumed that a time extension was possible and meaningful even after 31 October 2007.

⁵ — COM(96) 538 final, paragraph 59.

⁶ — Adopted in Gothenburg on 30 November 1999 (OJ 2003 L 179, p. 3).

⁷ — Council Decision 2003/507/EC of 13 June 2003 (OJ 2003 L 179, p. 1).

26. The position taken by the Netherlands must therefore be rejected.

2. The position taken by the Commission — no time extension for installations with a constant solid content of product

27. The Commission takes a nuanced position, which probably also forms the basis of the question raised by the Raad van State. Its view is effectively that Annex IIB(2) to the VOC Directive contains a *special provision* for installations with constant solid content of product that takes precedence over the provision concerning time extensions. In this way, the time extension would be possible only in the case of installations with no constant solid content of product.

28. It is true that the second paragraph of Annex IIB(2) to the VOC Directive states that a particular reduction scheme is to operate for installations for which a constant solid content of product can be assumed and used to define the reference point for emission reductions. Under that scheme, existing installations must achieve the ultimate target value by 31 October 2007.

29. Contrary to the view expressed by the Commission, however, the second paragraph of Annex IIB(2) to the VOC Directive does not contain a special provision precluding a time extension. This is apparent from the fact that the VOC Directive was incorporated into the Industrial Emissions Directive and from the objectives pursued by those provisions.

a) Incorporation of the VOC Directive into the Industrial Emissions Directive

30. If, the time-limits laid down in the reduction scheme provided for in the second paragraph of Annex IIB(2) to the VOC Directive, as a special provision were to have displaced time extensions under point (i) of the first paragraph of Annex IIB(2) to the VOC Directive would have been far more restrictive than the currently applicable provisions of Annex VII, Part 5, to the Industrial Emissions Directive. Point 2(a) of the latter still contains the possibility of a time extension, but no longer prescribes the time-limits contained in point (i) of the second paragraph of Annex IIB(2) to the VOC Directive. Within the scope of the currently applicable Industrial Emissions Directive, there is therefore the possibility of a time extension even in the case of a constant solid content of product.

31. I can, however, see no reason why a time extension should be given now for installations that would not have been eligible for such an extension when the VOC Directive was in force. On the contrary, it is fair to assume that the development of substitutes has since progressed to such an extent that there should be far less need for time extensions.

32. Moreover, there is nothing to indicate that the provisions of the VOC Directive, and in particular the possibility of a time extension, were to be amended when incorporated into the Industrial Emissions Directive. The Industrial Emissions Directive is primarily intended to consolidate a number of other directives. The deletion of the time-limits contained in point (i) of the second paragraph of Annex IIB(2) to the VOC Directive is consistent with that objective since they had already expired when the Industrial Emissions Directive was adopted. If this had also dispensed with the need for the time extension scheme, the provision providing for it would have been deleted too. And if that provision had been intended to continue to apply only for certain types of installation, the legislature would have made this clear when it deleted the time-limits.

33. It must therefore be assumed that the legislature assumed, at least at the time when the Industrial Emissions Directive was adopted, that the VOC Directive itself allowed a time extension even for installations with a constant solid content of product.

b) The provisions' objectives

34. The objectives of the provisions concerning time extensions and installations with a constant solid content of product confirm that it is possible to extend the time-limits for all types of installation.

35. Although the VOC Directive does not expressly state the objectives of the time extension scheme, it may nevertheless be assumed that it pursues two objectives.

36. First of all, it serves to avoid unreasonable cost. There is no point in investing to limit an installation's emissions if those emissions can be prevented far more cheaply a short time later when substitutes containing little or no solvent are available. To this extent, the time extension scheme is an expression of the principle of proportionality.

37. Secondly, it serves to create an incentive for the development of substitutes. If an undertaking can avoid expensive emission-reducing measures by using substitutes, it may be prepared to develop or support the development of such substitutes.

38. That second objective is of particular interest from the point of view of environmental protection. After all, substitutes containing little or no solvent can contribute towards the low-cost limitation of emissions of volatile organic compounds above and beyond the context of the installation concerned. Their development may therefore justify longer transitional periods.

39. So far as the application of the time extension scheme to installations with a constant solid content of product is concerned, the VOC Directive contains no reference to any differences between these and other installations that are relevant to these two objectives.

40. The only discernible reason why the criterion of a constant solid content of product is used at all is expressed in the reference in the second paragraph of Annex IIB(2) to the VOC Directive to the effect that that content can be 'used to define the reference point for emission reductions'.

41. After all, in the case of a constant solid content of product, it is relatively easy to calculate the total mass of solids accrued and, by reference to the rules subsequently set out in point (ii) of the second paragraph of Annex IIB(2) to the VOC Directive, the target values for the reduction scheme.

42. If an installation's solid content of product is not constant, it is not possible to proceed in this way. The target values of a reduction scheme for such other installations must therefore be determined in a different way.

43. It may thus be concluded that the criterion of a constant solid content of product is not intended to preclude a time extension. It has nothing to do with the objectives of the time extension scheme and does not therefore, from this point of view, justify any distinction in relation to other installations.

44. It is true that the Commission and the Netherlands submitted at the hearing that, at the time when the VOC Directive was adopted, a relatively comprehensive body of knowledge concerning installations with a constant solid content of product was already available. According to the Commission in particular, that knowledge and the similarity between the types of installation concerned justify the specific reduction scheme provided for in the second paragraph of Annex IIB(2) to the VOC Directive and the fact that that scheme makes no provision for the possibility of a time extension.

45. However, that point of view has no basis either in the VOC Directive or in the available material from the directive's drafting history. Moreover, the case of Nannoka shows that there appear to be some installations with a constant solid content of product which do have an interest in a time extension during the development of substitutes. I do not therefore consider that argument to constitute a sufficient basis on which to exclude time extensions in principle, to the detriment of operators of installations with a constant solid content of product, even though the wording of point (i) of the first paragraph of Annex IIB(2) indicates that that possibility is available.

3. Conclusion with respect to the first question

46. The answer to the first question must therefore be that, for the purposes of point (i) of the first paragraph of Annex IIB(2) to the VOC Directive, the operator of installations for which a constant solid content of product can be assumed must in principle be given a time extension for the implementation of its reduction scheme, by way of derogation from the time frame set out in that annex, where substitutes containing little or no solvent are still under development.

B – *The conditions for a time extension (second and third questions)*

47. The answer to the first question means that the second and third questions must be answered. It makes sense, however, to discuss them in reverse order.

1. The material conditions for a time extension (third question)

48. The third question highlights the difficulties that follow from the answer to the first question.

49. The Raad van State wishes to ascertain the criteria against which a time extension is to be decided upon. At first sight, however, point (i) of the first paragraph of Annex IIB(2) to the VOC Directive contains only a few criteria. It provides that a time extension must be given to the operator to implement his emission reduction plans where substitutes containing little or no solvent are still under development.

50. This could be understood as meaning that the competent authorities must extend the time-limit until such time as substitutes are available, and, therefore, potentially without restriction.

51. This could deprive the remaining provisions of the VOC Directive of much of their practical effect. Operators could refuse to apply the limit values or other reduction measures simply on the ground that they are waiting for substitutes in order to reduce emissions. The VOC Directive would be binding only in so far as operators have to use substitutes containing little or no solvent as soon as these are useable.

52. That interpretation would, however, be incompatible with the objective of the VOC Directive. Article 1 states that its purpose is to prevent or reduce the direct and indirect effects of emissions of volatile organic compounds into the environment and the potential risks to human health by providing measures and procedures to be implemented for the activities covered in so far as they are operated above solvent consumption thresholds. Moreover, that objective corresponds to an international law obligation entered into by the European Union under the Gothenburg Protocol.⁸ Waiting until substitutes can be used without laying down discernible time-limits would not be a suitable means of achieving that objective.

⁸ — See point 24 above.

53. Furthermore, in 1999, the legislature did not expect that it would be much longer before substitutes were developed. On the contrary, it appears from recital 8 in the preamble to the VOC Directive that it assumed that less harmful substitutes were available or would become available within the coming years.

54. For the purposes of point (i) of the first paragraph of Annex IIB(2) to the VOC Directive, a time extension is therefore conceivable only if substitutes containing little or no solvent are actually being developed and it can be assumed that they will be available within a few years.

55. In defining that time frame, account must be taken of the objectives of the time extension — to avoid unnecessary costs and act as an incentive to develop substitutes⁹ — in the light of the principle of proportionality.

56. This therefore necessitates the actual development of substitutes capable of being used in the installation concerned and of reducing solvent emissions. Moreover, there must be no alternative measures capable of bringing about even greater reductions in emissions at similar costs.

57. In addition, account must be taken of the relationship between the emission reduction achievable with the substitutes and the costs thereof, on the one hand, and the additional emissions resulting from the time extension and the costs of any alternative measures, on the other hand.

58. If a substitute holds out the prospect of only minor emission reductions but involves costs similar to those of immediately deployable alternative measures, it does not therefore justify a time extension. On the other hand, a substitute that promises high savings at low costs supports the case for a longer wait.

59. However, a development process that is expected to take more than five years will usually fall outside the time frame of the ‘coming’ or next few years. Moreover, long planning horizons will also make it difficult to demonstrate adequate prospects of success.

60. As the Commission points out, it must also be borne in mind that, in so far as it constitutes a derogation from the general rules of the VOC Directive, the time extension must be interpreted strictly.¹⁰ There must therefore be sufficiently tangible evidence of the presence of the conditions for a time extension, that is to say that suitable substitutes are currently in development. It must also be highly likely that the development will be successful.

61. In assessing those conditions, the competent authorities make a complex scientific and economic forecast. They must therefore be afforded a wide margin of discretion¹¹ which should be reviewed only to ensure that no manifest errors have been committed.¹² They must none the less examine carefully and impartially all relevant aspects of each individual case and give adequate reasons for their decisions.¹³ That means they must give careful consideration to the arguments in favour of a time extension.

9 — See points 34 to 38 of this Opinion.

10 — See the judgments in *Akyüz* (C-467/10, EU:C:2012:112, paragraph 45), *Granton Advertising* (C-461/12, EU:C:2014:1745, paragraph 25) and *Ministero dell'Interno* (C-19/13, EU:C:2014:2194, paragraph 40).

11 — Judgment in *ERG and Others* (C-379/08 and C-380/08, EU:C:2010:127, paragraph 59).

12 — Judgments in *UEFA v Commission* (C-201/11 P, EU:C:2013:519, paragraph 19), and *FIFA v Commission* (C-205/11 P, EU:C:2013:478, paragraph 21).

13 — Judgments in *ERG and Others* (C-379/08 and C-380/08, EU:C:2010:127, paragraphs 61 and 63) and *FIFA v Commission* (C-205/11 P, EU:C:2013:478, paragraph 21). For the review of EU institutions, see the judgments in *Technische Universität München* (C-269/90, EU:C:1991:438, paragraph 14), *Spain v Lenzing* (C-525/04 P, EU:C:2007:698, paragraph 58) and *Council v Zhejiang Xinan Chemical Industrial Group* (C-337/09 P, EU:C:2012:471, paragraph 107).

62. The answer to the third question must therefore be that, for the purposes of point (i) of the first paragraph of Annex IIB(2) to the VOC Directive, a time extension for the implementation of the emission reduction scheme is subject to the condition of there actually being under development a substitute which is highly likely to be capable, within a few years, of reducing the installation's solvent emissions to a greater extent than alternative measures involving similar costs or to the same extent as, but at a lower cost than, alternative measures. The additional emissions during that time extension must be proportionate to the emission reductions and costs savings that can be expected from the substitute.

2. The procedure for granting the time extension (second question)

63. By the second question, the Raad van State wishes to ascertain whether particular action on the part of the operator of the installation or authorisation from a competent authority is required for the conferring of a time extension for the implementation of the reduction scheme provided for in Annex IIB to the VOC Directive.

64. The answer can be found in the wording of the relevant provisions. Point (i) of the first paragraph of Annex IIB(2) to the VOC Directive states that the time extension is to be *given*. The time is not therefore extended automatically, but only by decision of the competent authorities.

65. Such a decision requires an application by the operator of the installation, since the latter is seeking to obtain a derogation from the requirements that would otherwise apply. Moreover, the operator alone is in a position to take the economic decision as to how the requirements of the VOC Directive are to be implemented in the installation.

66. Without that application, on the other hand, the competent authorities do not usually have the information necessary to be able to check that the conditions described above are present. Moreover, there is nothing to indicate that they are required to act of their own motion.

67. If, however, the competent authorities do have relevant information, such as knowledge of promising development projects, and are not required to keep this secret, they should so inform the installation operators concerned within their sphere of responsibility so as to make it easier for them to implement the VOC Directive.

68. In practice, an application for a time extension should be submitted together with the reduction scheme. Although the VOC Directive does not expressly require the operator to submit the scheme, Article 4(2) none the less requires all existing installations to be either authorised or registered. In addition, Article 4(3) requires the use of a reduction scheme to be notified to the competent authorities. Furthermore, derogations from the specimen scheme set out in the second paragraph of Annex IIB(2) must be 'allowed' by the authorities and shown to be equivalent. Finally, in accordance with Article 9(1), second indent, operators must demonstrate that the installation complies with the requirements of the reduction scheme. They can only do so if, along with the information on emissions provided for in Article 8, the scheme itself is submitted as well.

69. As far as the requirements to be satisfied are concerned, the reduction scheme must at least show the extent to which the time-limits are exceeded. Since the act of exceeding the time-limits would constitute a derogation from the provisions of Annex IIB to the VOC Directive, it must, when the scheme is submitted, be supported by evidence that the conditions for giving a time extension are present.

70. The answer to the second question must therefore be that a time extension for the implementation of the reduction scheme provided for in point (i) of the first paragraph of Annex IIB(2) to the VOC Directive requires authorisation from the competent authority for which the operator must submit an application together with evidence that the conditions for a time extension are present.

V – Conclusion

71. I therefore propose that the Court should reply to the request for a preliminary ruling as follows:

- (1) For the purposes of point (i) of the first paragraph of Annex IIB(2) to Directive 1999/13/EC on the limitation of emissions of volatile organic compounds, the operator of installations for which a constant solid content of product can be assumed must in principle be given a time extension for the implementation of its reduction scheme, by way of derogation from the time frame set out in that annex, where substitutes containing little or no solvent are still under development.
- (2) A time extension for the implementation of the reduction scheme provided for in point (i) of the first paragraph of Annex IIB(2) to Directive 1999/13/EC requires authorisation from the competent authority for which the operator must submit an application together with evidence that the conditions for a time extension are met.
- (3) For the purposes of point (i) of the first paragraph of Annex IIB(2) to Directive 1999/13/EC, a time extension for the implementation of the emission reduction scheme is subject to the condition of there actually being under development a substitute which is highly likely to be capable, within a few years, of reducing the installation's solvent emissions to a greater extent than alternative measures involving similar costs or to the same extent as but at a lower cost than alternative measures. The additional emissions during that time extension must be proportionate to the emission reductions and cost savings that can be expected from the substitute.