



Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

10 September 2015*

(Reference for a preliminary ruling — Directive 1999/13/EC — Annex IIB — Atmospheric pollution — Volatile organic compounds — Emission reductions — Use of organic solvents in certain activities and installations — Obligations applying to existing installations — Time extension)

In Case C-81/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Raad van State (Netherlands), made by decision of 12 February 2014, received at the Court on 17 February 2014, in the proceedings

Nannoka Vulcanus Industries BV

v

College van gedeputeerde staten van Gelderland,

THE COURT (Fifth Chamber),

composed of T. von Danwitz, President of the Chamber, C. Vajda, A. Rosas (Rapporteur), E. Juhász and D. Šváby, Judges,

Advocate General: J. Kokott,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 26 February 2015,

after considering the observations submitted on behalf of:

- Nannoka Vulcanus Industries BV, by M. Baneke, advocaat,
- the Netherlands Government, by M. Bulterman, B. Koopman and C. Schillemans, acting as Agents,
- the European Commission, by E. Manhaeve and S. Petrova, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 12 March 2015,

gives the following

* Language of the case: Dutch.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Annex IIB to 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, and corrigenda OJ 1999 L 188, p. 54 and OJ 1999 L 240, p. 24).
- 2 The request was made in proceedings between Nannoka Vulcanus Industries BV ('Nannoka') and the College van gedeputeerde staten van Gelderland (Executive Board of the Provincial Committee for the Region of Gelderland; 'the Board'), concerning the Board's order requiring Nannoka to discontinue and rectify, on pain of imposition of periodic penalties, its infringement of the Netherlands legislation transposing Directive 1999/13.

Legal context

EU law

- 3 Recitals 5 to 9 in the preamble to Directive 1999/13 state:
 - (5) Whereas, because of their characteristics, the use of organic solvents in certain activities and installations gives rise to emissions of organic compounds into the air which can be harmful for public health and/or contributes to the local and transboundary formation of photochemical oxidants in the boundary layer of the troposphere which cause[s] damage to natural resources of vital environmental and economic importance and, under certain exposure conditions, has harmful effects on human health;
 - (6) Whereas the high incidence of high tropospheric ozone concentrations in recent years has triggered widespread concern regarding the impact on public health and the environment;
 - (7) Whereas, therefore, preventive action is required to protect public health and the environment against the consequences of particularly harmful emissions from the use of organic solvents and to guarantee citizens the right to a clean and healthy environment;
 - (8) Whereas emissions of organic compounds can be avoided or reduced in many activities and installations because potentially less harmful substitutes are available or will become available within the coming years; whereas, where appropriate substitutes are not available, other technical measures should be taken to reduce emissions into the environment as much as economically and technically feasible;
 - (9) Whereas the use of organic solvents and the emissions of organic compounds which have the most serious effects on public health should be reduced as much as technically feasible.'
- 4 Recitals 14 and 15 in the preamble to Directive 1999/13 state:
 - (14) Whereas a high level of environmental protection requires the setting and achievement of emission limits for organic compounds and appropriate operating conditions, in accordance with the principle of best available techniques, for certain installations and activities using organic solvents within the Community;
 - (15) Whereas in some cases Member States may exempt operators from complying with the emission limit values because other measures, such as the use of low-solvent or solvent-free products or techniques, provide alternative means of achieving equivalent emission reductions.'

5 According to Article 1 of Directive 1999/13, the purpose of that directive is to prevent or reduce the direct and indirect effects of emissions of volatile organic compounds into the environment, mainly into the air, and the potential risks to human health, by providing measures and procedures to be implemented for the industrial activities defined in Annex I to that directive, in so far as they are operated above the thresholds listed in Annex IIA to that directive.

6 Article 2(1) of Directive 1999/13 defines ‘installation’ for the purposes of that directive as a stationary technical unit where one or more activities falling within the scope defined in Article 1 of that directive are carried out, and any other directly associated activities which have a technical connection with the activities carried out on that site and which could have an effect on emissions.

7 Article 3 of Directive 1999/13 provides:

‘Member States shall adopt the necessary measures to ensure that:

(1) all new installations comply with Articles 5, 8 and 9;

...’

8 Article 4 of Directive 1999/13 provides:

‘Without prejudice to [Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ 1996 L 257, p. 26)] 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;

...

(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;

...’

9 According to Article 5(2) of Directive 1999/13:

‘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;

(b) the requirements of the reduction scheme specified in Annex IIB.’

10 Article 9(1) of Directive 1999/13 is worded thus:

‘Compliance with the following shall be demonstrated to the satisfaction of the competent authority:

...

— the requirements of the reduction scheme under Annex IIB,

...’

11 The first subparagraph of Article 15(1) of Directive 1999/13 provides:

‘Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1 April 2001. They shall forthwith inform the Commission thereof.’

12 Annex IIB to Directive 1999/13, entitled ‘Reduction Scheme’, is worded as follows:

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 takes 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 limit		Maximum allowed total annual emissions
New installations	Existing installations	
By 31.10.2001	By 31.10.2005	Target emission × 1,5
By 31.10.2004	By 31.10.2007	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.

...'

13 With effect from 7 January 2014, Directive 1999/13 was repealed by Directive 2010/75/EU of the European Parliament and the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ 2010 L 334, p. 17).

14 It is clear from recital 1 in the preamble to Directive 2010/75 that that directive recasts seven directives, including Directive 1999/13.

15 Under the first subparagraph of Article 59(1) of Directive 2010/75:

'Member States shall take the necessary measures to ensure that each installation complies with either of the following:

(a) the emission of volatile organic compounds from installations shall not exceed the emission limit values in waste gases and the fugitive emission limit values, or the total emission limit values, and other requirements laid down in Parts 2 and 3 of Annex VII are complied with;

(b) the requirements of the reduction scheme set out in Part 5 of Annex VII provided that an equivalent emission reduction is achieved compared to that achieved through the application of the emission limit values referred to in point (a).'

16 Article 80(1) of Directive 2010/75 provides:

'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with ... point 1 of Part 5 ... of Annex VII ... by 7 January 2013.

They shall apply those measures from that same date.

...'

17 Article 81(1) of Directive 2010/75 provides:

'[Directive 1999/13 and other directives] ... are repealed with effect from 7 January 2014, without prejudice to the obligations of the Member States relating to the time limits for transposition into national law and application of the Directives set out in Annex IX, Part B.'

18 Part 5, entitled 'Reduction scheme', of Annex VII to Directive 2010/75, itself entitled 'Technical provisions relating to installations and activities using organic solvents', is worded as follows:

'1. The operator may use any reduction scheme, specially designed for his installation.

2. 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 scheme achieving equivalent emission reductions to those achieved if the emission limit values of Parts 2 and 3 were to be applied. The design of the scheme shall take into account the following facts:

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

(b) 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.

3. The following scheme shall operate for installations for which a constant solid content of product can be assumed:
- (a) The annual reference emission is calculated as follows:
- (i) 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.
- (ii) The annual reference emissions are calculated by multiplying the mass determined in (i) by the appropriate factor listed in the table below. Competent authorities may adjust these factors for individual installations to reflect documented increased efficiency in the use of solids.

...'

Netherlands law

- 19 It is apparent from the order for reference that Articles 4(1) and 5(2) of Directive 1999/13 were transposed into Netherlands law by Articles 3(1) and 5(a) of the Solvents Decree implementing Directive 1999/13 (Oplosmiddelenbesluit omzetting EG-VOS-richtlijn milieubeheer, Stb. 2001, No 161; 'the Solvents Decree').
- 20 Those provisions of the Solvents Decree required the undertakings concerned to take the measures necessary to ensure that their installations would, by no later than 31 October 2007, comply with the emission limit values specified in Annex IIA to that decree, or with the requirements of the plan to reduce emissions of volatile organic compounds ('the reduction scheme') specified in Annex IIB to that decree. The content of the latter annex is identical to that of Annex IIB to Directive 1999/13.

The dispute in the main proceedings and the questions referred for a preliminary ruling

- 21 Nannoka operates an installation for varnish and coating processes.
- 22 By decision of 7 October 2010, the Board imposed an order requiring Nannoka to discontinue and rectify, on pain of imposition of periodic penalties, its infringement of the combined provisions of Articles 3(1) and 5(a) of the Solvents Decree.
- 23 By decision of 13 July 2011, the Board dismissed the administrative appeal lodged by Nannoka against its decision of 7 October 2010.
- 24 By judgment of 3 May 2012, the Rechtbank Arnhem (District Court, Arnhem) dismissed the action brought by Nannoka against the Board's decision of 13 July 2011.
- 25 Nannoka brought an appeal against that judgment before the Raad van State (Council of State).
- 26 The referring court states that the fact that the Board's decision of 7 October 2010 was withdrawn on 7 March 2013 does not remove Nannoka's interest in a substantive appraisal on appeal of the case at issue in the main proceedings. According to the referring court, Nannoka has convincingly established that it suffered actual harm as a consequence of the withdrawn decision, since it was obliged to subcontract a portion of its business to another company.

- 27 According to the referring court, it is common ground that Nannoka was, on 31 October 2007, not in compliance with the emission limit values laid down in Annex IIA to the Solvents Decree.
- 28 Nannoka's argument, however, before the referring court is that it was in compliance with the requirements of the reduction scheme specified in Annex IIB to the Solvents Decree, since, according to Nannoka, that annex gave it an extension of the time-limit beyond 31 October 2007 in order to implement its own reduction scheme.
- 29 According to Nannoka, Annex IIB to Directive 1999/13 provides that a time extension must be given to the operator to implement his reduction scheme where substitutes containing little or no solvent are still under development. Nannoka takes the view that that is the situation in the main proceedings.
- 30 Before the referring court, the parties agreed that Nannoka, by letter of 27 October 2005, notified the competent national authorities of its intention to have recourse to a reduction scheme. It is, furthermore, undisputed that Nannoka drew up such a reduction scheme. According to the referring court, that reduction scheme did not however enable Nannoka to meet by 31 October 2007 the 'target emission', set out in the second paragraph of Annex IIB(2) to Directive 1999/13.
- 31 The referring court notes that Annex IIB to Directive 1999/13 does not require the adoption of a reduction scheme which has to conform to a specific template, but rather sets out principles, guidance and requirements with which, in accordance with Article 5(2) of the directive, the operator must comply where he establishes his own reduction scheme.
- 32 Annex IIB to Directive 1999/13 does not, however, enable the referring court to determine with precision either the situations in which the time extension which it provides for can be legally given or the possible duration of such an extension.
- 33 The referring court points out that that annex provides, in respect of installations for which a constant solid content of product can be assumed and used to define the reference point for emission reductions, for the application of a particular reduction scheme ('the standard scheme'). That annex subsequently provides a time frame for the attainment of the 'target' emissions and a calculation method for determining those emissions.
- 34 According to the referring court, there is nothing to support the conclusion that, in the main proceedings, Nannoka's installations did not meet the conditions to which the application of that standard scheme is subject. It appears that, in situations where that standard scheme operates, the time frame set out in Annex IIB to Directive 1999/13 may not be departed from. Given that, according to that time frame, the target emission was to be attained by 31 October 2007 and that it was plainly impossible for Nannoka's reduction scheme to achieve that result, doubt remains, according to the referring court, as to whether that reduction scheme complied with the requirements of Annex IIB to Directive 1999/13.
- 35 However, given that that annex states that account must also be taken of the fact 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, the referring court asks whether, even in situations where the standard scheme is applicable, that scheme's time frame may none the less be departed from.
- 36 The referring court accordingly envisages two possible interpretations of Annex IIB to Directive 1999/13. According to the first interpretation, the time extension can be given only where the standard scheme is not appropriate to the situation concerned and a different type of reduction

scheme is drawn up for that reason. According to the second interpretation, even where the standard scheme is applicable, a time extension can be obtained by way of derogation from the time frame provided for in that scheme.

37 In the event that that second interpretation is accepted by the Court, the referring court is also unsure about the conditions required for an operator to qualify for a time extension and the length of time that extension may last. Annex IIB to Directive 1999/13 does not specify, for example, whether a time extension is contingent on an authorisation from the competent authorities or whether it occurs automatically. That annex does not state to what extent the development of the substitutes containing little or no solvent must have materialised, or what stage that development must have reached, in order to confer an entitlement to a time extension. Further, the annex does not specify the criteria on the basis of which the duration of the time extension is to be determined.

38 In those circumstances, the Raad van State decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

‘(1) Does it follow from Annex IIB to Directive [1999/13] 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 his reduction scheme, by way of 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 Directive [1999/13]?

(3) On the basis of which criteria can the duration of the time extension provided for in Annex IIB to Directive [1999/13] be determined?’

Consideration of the questions referred

The first question

39 By its first question, the referring court seeks to ascertain, in essence, whether Annex IIB to Directive 1999/13 must be interpreted as meaning that the time extension provided for in point (i) of the first paragraph of Annex IIB(2) to that directive can be given to the operator of an ‘installation’ within the meaning of Article 2(1) of that directive, for the implementation of his reduction scheme, where substitutes containing little or no solvent are still under development, even though, for that installation, a constant solid content of product can be assumed and used to define the reference point for emission reductions.

40 Pursuant to Article 5(2) of Directive 1999/13, all installations covered by that directive must comply either with the emission limit values of the volatile organic compounds laid down in Annex IIA to that directive, or with the requirements of the reduction scheme in Annex IIB to that directive.

41 According to Annex IIB(1) to that directive, the purpose of the reduction scheme is to allow the operator the possibility of achieving by other means than by the application of those emission limit values, emission reductions which are equivalent to those he would achieve if those values were to be applied. As the Advocate General observed in point 14 of her Opinion, a reduction scheme is based on the use of substitutes and processes that generate fewer emissions.

- 42 According to the first paragraph of Annex IIB(2) to Directive 1999/13, in the case of applying coatings, varnishes, adhesives or inks, a specific scheme, laid down in the second paragraph of Annex IIB(2), namely the standard scheme, can be used. Pursuant to that latter provision, that 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. The first paragraph of Annex IIB(2) states that where that method is inappropriate the competent authority may allow an operator to apply any alternative exemption scheme which it is satisfied fulfils the principles outlined in Annex IIB(1).
- 43 In the main proceedings, it appears from the order for reference that there is nothing to suggest that Nannoka's installations did not meet the conditions required for the application of the standard scheme.
- 44 Since point (i) of the first paragraph of Annex IIB(2) to Directive 1999/13 provides that a time extension must be given to the operator concerned for the implementation of his reduction scheme where substitutes containing little or no solvent are still under development, it must be determined whether that time extension must be given irrespective of which reduction scheme is applicable to that operator's installation or whether the granting of such a time extension is possible only in the case of the operation of a reduction scheme other than the standard scheme.
- 45 In that regard, it should be noted at the outset that the wording of that annex does not provide a clear answer to that question.
- 46 Although the wording of point (i) of the first paragraph of Annex IIB(2) to Directive 1999/13 appears to indicate 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, the sequence of the three sentences in the first paragraph of that section (2) does not make possible a determination whether a time extension must also be given in the specific situation where that operator applies the standard scheme.
- 47 It should be noted that although, in the French version of Directive 1999/13, the phrase '[à] cet effet' [to that end], at the start of the third sentence of Annex IIB(2) to Directive 1999/13, seems, at first sight, to refer only to the possibility, mentioned in the previous sentence of that section, of the application of 'any alternative exemption scheme' [other than the standard scheme], that interpretation cannot, however, be confirmed unequivocally in the light of other language versions of Directive 1999/13, such as the German, English and Dutch language versions, which contain no phrase equivalent to the expression '[à] cet effet'. In those versions, the third sentence could accordingly be interpreted broadly, as referring to any reduction scheme, including the standard scheme.
- 48 In that context, the Netherlands Government argues that, whatever reduction scheme is implemented by the operator concerned, any time extension given to it could not go beyond 31 October 2007, since that is the date by which the emissions of existing installations had to comply, in accordance with Article 4(1) of Directive 1999/13 and Annex IIB(2), second paragraph, point (i) thereto, with the requirements of Article 5 of that directive, namely, the thresholds referred to in Annex IIA to that directive or the reduction scheme described in Annex IIB thereto.
- 49 That position cannot, however, be accepted.
- 50 The possibility, expressly provided for in point (i) of the first paragraph of Annex IIB(2) to Directive 1999/13, of giving an operator a time extension for the implementation of his reduction scheme necessarily implies that all the periods referred to in that directive, including that expiring on 31 October 2007 in respect of existing installations, can be extended. As the Advocate General observed in point 22 of her Opinion, the position of the Netherlands Government would mean that

point (i) of the first paragraph of Annex IIB(2) to Directive 1999/13 would no longer be prescriptive and would reduce that provision to a mere explanation of how the period in question was to be calculated.

- 51 It should, moreover, be noted that, when Directive 2010/75 was adopted in 2010, the EU legislature reproduced in point 2(a) of Part 5 of Annex VII to that directive, in terms identical to the provisions contained in point (i) of the first paragraph of Annex IIB(2) to Directive 1999/13, the possibility of giving a time extension to an operator for the application of a reduction scheme. However, as the Advocate General observed in point 32 of her Opinion, there is nothing to suggest that the provision at issue of Directive 1999/13 was to be amended when incorporated into Directive 2010/75. The legislature therefore proceeded on the assumption that a time extension could be envisaged even after 31 October 2007.
- 52 The Commission, for its part, argues that the second paragraph of Annex IIB(2) to Directive 1999/13 contains a special rule, applicable to installations in which a product with a constant solid content is used, which prevails over the provision relating to the time extension. According to the Commission, a time extension is accordingly possible only for installations in which a product without a constant solid content is used.
- 53 In that regard, while it is true that, in accordance with the second paragraph of Annex IIB(2) to Directive 1999/13, a specific reduction scheme, namely the standard 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, that scheme does not, however, constitute a special rule precluding a time extension from being given to the operators of such installations.
- 54 It should be noted that the first paragraph of Annex IIB(2) to Directive 1999/13 states that in the case of applying coatings, varnishes, adhesives or inks, the standard scheme ‘can’ be used and, where that scheme is not appropriate, the competent authority ‘may’ allow an operator to apply any alternative exemption scheme which it is satisfied fulfils the principles outlined in Annex IIB(1) to that directive. It should be noted that nothing in the wording of that provision precludes, in the case where the standard scheme is not appropriate, the application of any alternative scheme in respect of installations for which a constant solid content of product can be assumed. Accordingly, just as it is possible for the standard scheme not to apply to such installations, a time extension may be given to them where substitutes containing little or no solvent are still under development.
- 55 Moreover, the possibility of giving a time extension in respect of all types of installations regardless of the reduction scheme adopted is borne out by the *ratio legis* underpinning the provisions of Directive 1999/13 which relate to the time extension and to the installations which have a constant solid content of product.
- 56 First, as the Advocate General observed in point 36 of her Opinion, that time extension is an expression of the principle of proportionality. In the light of that principle, it seems excessive to require operators of an installation to make investments aimed at reducing the emissions of volatile organic compounds of an installation before a certain date if those emissions can be avoided or very significantly reduced in the near future, at a lower cost, when substitutes containing little or no solvent, which are still under development, will be available. Second, as is apparent from recital 8 in the preamble to Directive 1999/13, the extension is based on the consideration that emissions of organic compounds can be avoided or reduced by less harmful substitutes which are or which will become available in the coming years. If an undertaking can avoid expensive measures to reduce emissions, by using substitutes, it will probably be prepared to develop or support the development of such substitutes. In addition, since substitutes containing little or no solvent can contribute, beyond the confines of the installations concerned, to limiting emissions of volatile organic compounds into the environment, their development may justify a longer transitional period.

- 57 Concerning installations in which a product with a constant solid content is used, it is clear from the second paragraph of Annex IIB(2) to Directive 1999/13 that this content can be used to ‘define the reference point for emission reductions’. As the interested parties explained at the hearing, the presence of a constant solid content of product accordingly makes possible the identification of a method for determining the emissions targets of the installations concerned, a method to which the operator concerned cannot have recourse where a product with such a constant content is not used. It is also not stated in any provision of that annex that the objective pursued by introducing the criterion relating to the presence of a constant solid content of product was to preclude a time extension being given to the operator of an installation in which a product with such a constant content is used.
- 58 That criterion therefore appears to be unconnected to the *ratio legis* which underpins the provisions of Directive 1999/13 relating to the possibility of granting a time extension where substitutes containing little or no solvent are still under development. There is therefore no justification for a distinction, as regards that possibility, between installations in which a product with a constant solid content is used and other installations, and moreover no such distinction can be clearly inferred from the wording of point (i) of the first paragraph of Annex IIB(2) to Directive 1999/13.
- 59 Admittedly, at the hearing, the Commission argued that, when Directive 1999/13 was adopted, there were already a large number of substitutes for products with a constant solid content. According to the Commission, the EU legislature took that fact into account and, accordingly, when it laid down, in point (i) of the second paragraph of Annex IIB(2) to Directive 1999/13, the periods applicable to the standard scheme, it must have intended to preclude any right to a time extension in respect of the installations for which a constant solid content of product can be assumed.
- 60 However, neither the provisions of Directive 1999/13 nor the available preparatory documents relating to that directive support the Commission’s claims.
- 61 In that regard, it should be added that an interpretation of Annex IIB to Directive 1999/13 as precluding a time extension from being given, where substitutes containing little or no solvent are still under development, to the operator of an installation for which a constant solid content of product can be assumed, would, in any event, be contrary to the principle of legal certainty, which requires that EU rules enable those concerned to know precisely the extent of the obligations which are imposed on them and that those persons must be able to ascertain unequivocally what their obligations are and take steps accordingly (see, to that effect, judgments in *BGL*, C-78/01, EU:C:2003:490, paragraph 71 and *ArcelorMittal Luxembourg v Commission* and *Commission v ArcelorMittal Luxembourg and Others*, C-201/09 P and C-216/09 P, EU:C:2011:190, paragraph 68).
- 62 Since such an interpretation cannot be clearly inferred from the wording of Annex IIB to Directive 1999/13 and does not appear to be supported either in the light of the *ratio legis* underpinning the provisions of point (i) of the first paragraph of Annex IIB(2), relating to the time extension or in the light of the structure of that annex, the principle of legal certainty precludes an undertaking, such as Nannoka, being deprived of the right to qualify for such a time extension, on the basis of that annex.
- 63 The necessary conclusion therefore is that the possibility must exist of giving a time extension irrespective of the reduction scheme applicable to the installation concerned, where substitutes containing little or no solvent are still under development.
- 64 In the light of all the foregoing, the answer to the first question is that Directive 1999/13 must be interpreted as meaning that the time extension provided for in point (i) of the first paragraph of Annex IIB(2) to that directive can be given to the operator of an ‘installation’ within the meaning of Article 2(1) of that directive, for the implementation of his reduction scheme, where substitutes

containing little or no solvent are still under development, even though, for that installation, a constant solid content of product can be assumed and used to define the reference point for emission reductions.

The second and third questions

- 65 By its second and third questions, which it is appropriate to consider together, the referring court asks, in essence, first, whether point (i) of the first paragraph of Annex IIB(2) to Directive 1999/13 must be interpreted as meaning that a time extension for the implementation of the reduction scheme requires particular action by the operator of the installation concerned or an authorisation from the competent authorities and, second, on the basis of which criteria can the duration of that time extension be determined.
- 66 In that regard, it is clear from the very wording of point (i) of the first paragraph of Annex IIB(2) to Directive 1999/13 that the time extension referred to in that provision must be ‘given’. It follows that such a time extension cannot occur automatically and must necessarily ensue from a decision of the competent authorities. Moreover, as the Advocate General observed in point 65 of her Opinion, such a decision necessarily requires a prior application by the operator of the installation concerned, given that the latter seeks a derogation from the requirements which, in the absence of a time extension, would be applicable to him.
- 67 In that context, it is important to note the central role conferred on the competent authorities by the provisions of Directive 1999/13 in connection with an operator applying a reduction scheme.
- 68 Pursuant to Article 4(3) of Directive 1999/13, operators intending to implement a reduction scheme were required to notify the competent authorities by 31 October 2005 at the latest. In addition, pursuant to Article 9(1) of that directive, the compliance of the reduction scheme thus notified with the requirements of the reduction scheme under Annex IIB to that directive is to be demonstrated by the operator ‘to the satisfaction of the competent authority’. Finally, under Annex IIB(2) to that directive, in cases where the standard schema is not appropriate, ‘the competent authority may allow an operator to apply any alternative exemption scheme which it is satisfied fulfils the principles’ outlined in Annex IIB(1).
- 69 It follows from those provisions that the competent authority enjoys discretion when called upon to rule on an operator’s application for permission to apply a reduction scheme.
- 70 The same must necessarily hold good for the granting of a time extension for the implementation of such a reduction scheme, since that grant is closely linked to the authorisation given to an operator to apply that scheme.
- 71 A time extension can therefore take effect only pursuant to an authorisation given by the competent authorities, on the application of the operator concerned.
- 72 In that regard, point (i) of the first paragraph of Annex IIB(2) to Directive 1999/13 merely provides that, 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’.
- 73 Since it is an exception to the general provisions of Directive 1999/13, the time extension provided for in point (i) of the first paragraph of Annex IIB(2) to that directive must be interpreted strictly (see, to that effect, judgment in *ACI Adam and Others*, C-435/12, EU:C:2014:254, paragraph 22, and the case-law cited).

- 74 In that regard, it follows from the very wording of point (i) of the first paragraph of Annex IIB(2) to Directive 1999/13 — which provides for a time ‘extension’ only — that the application of a reduction scheme based on that annex must be limited in time.
- 75 When determining whether a time extension must be given to an operator for the implementation of a reduction scheme and fixing the duration of the time extension which may be given, account should be taken of the objectives pursued by the provisions of Annex IIB to Directive 1999/13 relating to the time extension, namely, as has been stated in paragraph 56 above, on the one hand, encouraging the development of substitutes and, on the other hand, taking into account the principle of proportionality.
- 76 As the Advocate General observed in points 56 and 57 of her Opinion, it is accordingly for the competent authorities, within the discretion available to them, to verify in particular that substitutes which may be used in the installations concerned and which may reduce the emissions of volatile organic compounds are actually under development, and that the work in progress, in the light of the evidence provided, is capable of perfecting such substitutes.
- 77 When examining the proportionality of the time extension requested in relation to the objective of encouraging the development of substitutes, account should be taken of the relationship between, on the one hand, the emission reductions which can be achieved by means of the substitutes under development and their costs and, on the other hand, the additional emissions resulting from the time extension and also the costs of any alternative measures. In addition, it is necessary to verify that there is no alternative measure which may result in similar or even greater emission reductions, at a lower cost, and, in particular, that other substitutes are not already available.
- 78 Accordingly, where the development of a substitute promises significant emission reductions, the operator concerned may be given such a time extension.
- 79 As regards the duration of the time extension which may be given, it is apparent that neither Annex IIB to Directive 1999/13 nor any other provision of that directive provides any guidance in that regard.
- 80 However, unless the other provisions of Directive 1999/13 are to be deprived of all practical effect, point (i) of the first paragraph of Annex IIB(2) to that directive cannot be interpreted as meaning that the competent authorities must give to the operator concerned a time extension until substitutes are available, without any limitation in time.
- 81 It is apparent in that regard from recital 8 in the preamble to Directive 1999/13 that the grant of an extension under point (i) of the first paragraph of Annex IIB(2) to that directive is to be contemplated only where substitutes containing little or no solvent are actually under development on the date on which the time extension is to be given and where it can be expected that they will become available ‘within the coming years’.
- 82 Although it appears from that provision that the extension may last for several years, it should, however, be held that the duration of that extension must not go beyond what is necessary for substitutes to be developed. That must be assessed in the light of all the relevant factors and, in particular by weighing, on the one hand, the magnitude of the emission reductions that will be achieved by the substitutes under development and also the cost of those substitutes and, on the other hand, the magnitude of the additional emissions which will result from the time extension and the cost of any alternative measures.
- 83 In view of all the foregoing, the answer to the second and third questions is that point (i) of the first paragraph of Annex IIB(2) to Directive 1999/13 must be interpreted as meaning that a time extension for the implementation of a reduction scheme requires an authorisation from the competent

authorities, which presupposes a prior application from the operator concerned. When determining whether a time extension must be given to an operator for the implementation of a reduction scheme and fixing the duration of the time extension which may be given, it is for those competent authorities, within the discretion available to them, to verify in particular that substitutes which may be used in the installations concerned and which may reduce the emissions of volatile organic compounds are actually under development, that the work in progress, in the light of the evidence provided, is capable of perfecting such substitutes and that there is no alternative measure which may result in similar or even greater emission reductions, at a lower cost, and, in particular, that other substitutes are not already available. Furthermore, account should be taken of the relationship between, on the one hand, the emission reductions which can be achieved by means of the substitutes and the cost of those substitutes and, on the other hand, the additional emissions engendered by the time extension and the cost of any alternative measures. The duration of the time extension must not go beyond what is necessary for substitutes to be developed. That must be assessed in the light of all the relevant factors and, in particular, the magnitude of the additional emissions engendered by the time extension and the cost of any alternative measures as compared with the magnitude of the emission reductions that will be achieved by the substitutes under development and the cost of those substitutes.

Costs

- ⁸⁴ Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fifth Chamber) hereby rules:

- 1. 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 must be interpreted as meaning that the time extension provided for in point (i) of the first paragraph of Annex IIB(2) to that directive may be given to the operator of an ‘installation’ within the meaning of Article 2(1) of that directive, for the implementation of his plan to reduce emissions of volatile organic compounds, where substitutes containing little or no solvent are still under development, even though, for that installation, a constant solid content of product can be assumed and used to define the reference point for emission reductions.**
- 2. Point (i) of the first paragraph of Annex IIB(2) to Directive 1999/13 must be interpreted as meaning that a time extension for the implementation of a scheme to reduce emissions of volatile organic compounds requires an authorisation from the competent authorities, which presupposes a prior application from the operator concerned. When determining whether a time extension must be given to an operator for the implementation of a plan to reduce emissions of volatile organic compounds and fixing the duration of the time extension which may be given, it is for those competent authorities, within the discretion available to them, to verify in particular that substitutes which may be used in the installations concerned and which may reduce the emissions of volatile organic compounds are actually under development, that the work in progress, in the light of the evidence provided, is capable of perfecting such substitutes and that there is no alternative measure which may result in similar or even greater emission reductions, at a lower cost, and, in particular, that other substitutes are not already available. Furthermore, account should be taken of the relationship between, on the one hand, the emission reductions which can be achieved by means of the substitutes under development and the cost of those substitutes and, on the other hand, the additional emissions engendered by the time extension and the cost of any alternative measures. The duration of the time extension must not go beyond what is necessary for substitutes to be developed. That must be assessed in the light of all**

the relevant factors and, in particular, the magnitude of the additional emissions engendered by the time extension and the cost of any alternative measures as compared with the magnitude of the emission reductions that will be achieved by the substitutes under development and the cost of those substitutes.

[Signatures]