

5. (a) Can an individual rely directly on Article 4 of the NEC Directive?

(b) If so, is it possible to do so from 27 November 2002 or only from 31 December 2010? Is it significant, when answering that question, that an application for an environmental permit indicates that the installation will become operational in the year 2011 at the earliest?

6. More particularly, if the granting of an environmental permit and/or other measures contribute to the national emission ceiling for SO<sub>2</sub> in the NEC Directive being exceeded or the risk of it being exceeded, is an individual entitled, on the basis of Article 4 of that Directive:

(a) to make a general claim that the Member State concerned should adopt a package of measures which, by 2010 at the latest, would limit the annual national emissions of SO<sub>2</sub> to amounts not greater than the national emission ceilings in the NEC Directive, or, if that does not succeed, a package of measures which would limit the emissions to those amounts as soon as possible thereafter?

(b) to make concrete claims that the Member State concerned should adopt specific measures in respect of an individual installation — for example, by refusing a permit or attaching further conditions or restrictions to the permit — which, by the year 2010 at the latest, would contribute to the annual national emissions of SO<sub>2</sub> being limited to amounts not greater than the emission ceilings in the NEC Directive, or, if that does not succeed, specific measures which would contribute to the emissions being limited to those amounts as soon as possible thereafter?

(c) In answering questions 6(a) and 6(b), is the extent to which the installation contributes to the emission ceiling being exceeded or the risk of it being exceeded, of significance?

<sup>(1)</sup> Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ 1996 L 257, p. 26).

<sup>(2)</sup> Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (Codified version) (Text with EEA relevance) (OJ 24, 29.1.2008, p. 8).

<sup>(3)</sup> Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants (OJ L 309, 27.11.2001, p. 22).

**Reference for a preliminary ruling from the Raad van State (The Netherlands) lodged on 11 May 2009 — Stichting Natuur en Milieu, Stichting Zuid-Hollandse Milieufederatie, Stichting Greenpeace Nederland, Vereniging van Verontruste Burgers van Voorne v Gedeputeerde Staten van Zuid-Holland, Interveners: Electrabel Nederland NV and Burgemeester en Wethouders Rotterdam**

**(Case C-166/09)**

(2009/C 193/03)

*Language of the case: Dutch*

## Referring court

Raad van State

## Parties to the main proceedings

*Applicants:* Stichting Natuur en Milieu, Stichting Zuid-Hollandse Milieufederatie, Stichting Greenpeace Nederland, Vereniging van Verontruste Burgers van Voorne

*Defendant:* Gedeputeerde Staten van Zuid-Holland

*Interveners:* Electrabel Nederland NV and Burgemeester en Wethouders Rotterdam

## Questions referred

1. Does the obligation of interpretation in conformity with directives imply that the obligations under Directive 2008/1/EC <sup>(1)</sup> concerning integrated pollution prevention and control as transposed in the Wet Milieubeheer, can and should be interpreted as meaning that, in deciding on an application for an environmental permit, the national emission ceiling for SO<sub>2</sub> and NO<sub>x</sub> in Directive 2001/81/EC <sup>(2)</sup> on national emission ceilings for certain atmospheric pollutants (hereinafter 'the NEC Directive') should be fully taken into account, in particular as regards the obligations under Article 9(4) of Directive 2008/1/EC?

2. (a) Does the duty of a Member State to refrain from adopting measures liable seriously to compromise the result prescribed by a directive also apply during the period of 27 November 2002 to 31 December 2010 envisaged in Article 4(1) of the NEC Directive?

(b) Do positive obligations rest with the Member State concerned during the relevant period of 27 November 2002 to 31 December 2010, either in parallel with the aforementioned duty to refrain, or in place thereof, if the national emission ceilings for SO<sub>2</sub> and/or NO<sub>x</sub> in the NEC Directive are exceeded or if there is a risk that they may be exceeded at the end of that period?

(c) In answering Questions 2(a) and 2(b), is it significant that an application for an environmental permit for an installation which contributes to the national emission

ceiling for SO<sub>2</sub> and/or NO<sub>x</sub> in the NEC Directive being exceeded or the risk of it being exceeded, indicates that the installation will become operational in the year 2011 at the earliest?

3. (a) Do the obligations referred to in question 2 imply that, in the absence of guarantees that the installation for which an environmental permit was sought would not contribute to the national emission ceilings for SO<sub>2</sub> and/or NO<sub>x</sub> in the NEC Directive being exceeded or the risk of them being exceeded, the Member State must refuse the application for the environmental permit or attach further conditions or restrictions to it? In answering that question, is the extent to which the installation contributes to the emission ceilings being exceeded or the risk of them being exceeded, of significance?
- (b) Or does the NEC Directive imply that, where the national emission ceilings for SO<sub>2</sub> and/or NO<sub>x</sub> are exceeded or risk being exceeded, a Member State also has the discretion to bring about the result prescribed by the Directive, not by refusing the permit or by making it subject to further conditions or restrictions, but rather by adopting other measures such as other forms of compensation?
4. Where obligations as referred to in questions 2 and 3 rest with a Member State, can a private individual bring the issue of compliance with those obligations before a national court?
5. (a) Can an individual rely directly on Article 4 of the NEC Directive?
- (b) If so, is it possible to do so from 27 November 2002 or only from 31 December 2010? Is it significant, when answering that question, that an application for an environmental permit indicates that the installation will become operational in the year 2011 at the earliest?
6. More particularly, if the granting of an environmental permit and/or other measures contributes to the national emission ceilings for SO<sub>2</sub> and/or NO<sub>x</sub> in the NEC Directive being exceeded or the risk of their being exceeded, is an individual entitled, on the basis of Article 4 of that Directive:
  - (a) to make a general claim that the Member State concerned should adopt a package of measures which, by 2010 at the latest, would limit the annual national emissions of SO<sub>2</sub> and NO<sub>x</sub> to amounts not greater than the national emission ceilings in the NEC Directive, or, if that does not succeed, a package of measures which would limit the emissions to those amounts as soon as possible thereafter?
  - (b) to make concrete claims that the Member State concerned should adopt specific measures in respect of an individual installation — for example, by refusing a permit or attaching further conditions or restrictions to the permit — which, by the year 2010 at the latest, would contribute to the annual national emissions of SO<sub>2</sub> and NO<sub>x</sub> being limited to amounts not greater than the emission ceilings in the NEC Directive, or, if that does not succeed, specific measures which would

contribute to the emissions being limited to those amounts as soon as possible thereafter?

- (c) In answering questions 6(a) and 6(b), is the extent to which the installation contributes to the emission ceilings being exceeded, or the risk of them being exceeded, of significance?

<sup>(1)</sup> Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (Codified version) (Text with EEA relevance) (OJ L 24, 29.1.2008, p. 8).

<sup>(2)</sup> Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants (OJ L 309, 27.11.2001, p. 22).

**Reference for a preliminary ruling from the Raad van State (Netherlands) lodged on 11 May 2009 — Stichting Natuur en Milieu, Stichting Zuid-Hollandse Milieufederatie, Stichting Greenpeace Nederland, Vereniging van Verontruste Burgers van Voorne v Gedeputeerde Staten van Zuid-Holland, interested third parties: E.On Benelux and Burgemeester en Wethouders Rotterdam**

**(Case C-167/09)**

(2009/C 193/04)

*Language of the case: Dutch*

#### Referring court

Raad van State

#### Parties to the main proceedings

*Applicants:* Stichting Natuur en Milieu, Stichting Zuid-Hollandse Milieufederatie, Stichting Greenpeace Nederland, Vereniging van Verontruste Burgers van Voorne

*Defendant:* Gedeputeerde Staten van Zuid-Holland

*Interested third parties:* E.On Benelux and Burgemeester en Wethouders Rotterdam

#### Questions referred

1. Does the obligation of interpretation in conformity with directives imply that the obligations under Directive 96/61/EC <sup>(1)</sup> concerning integrated pollution prevention and control (now: Directive 2008/1/EC <sup>(2)</sup> concerning integrated pollution prevention and control), as transposed in the Wet Milieubeheer, can and should be interpreted as meaning that, in deciding on an application for an environmental permit, the national emission ceiling for SO<sub>2</sub> and NO<sub>x</sub> in Directive 2001/81/EC <sup>(3)</sup> on national emission ceilings for certain atmospheric pollutants (hereinafter 'the NEC Directive') should be fully taken into account, in particular as regards the obligations under Article 9(4) of Directive 96/61/EC, now Directive 2008/1/EC?