



Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

24 October 2019*

(Failure of a Member State to fulfil obligations – Environment – Directive 2008/50/EC – Ambient air quality – Article 13(1) and Annex XI – Systematic and persistent exceedance of the limit values for nitrogen dioxide (NO₂) in certain French zones and agglomerations – Article 23(1) – Annex XV – Exceedance period ‘as short as possible’ – Appropriate measures)

In Case C-636/18,

ACTION under Article 258 TFEU for failure to fulfil obligations, brought on 11 October 2018,

European Commission, represented by J.-F. Brakeland, E. Manhaeve and K. Petersen, acting as Agents,

applicant,

v

French Republic, represented by D. Colas, J. Traband and A. Alidière, acting as Agents,

defendant,

THE COURT (Seventh Chamber),

composed of T. von Danwitz, acting as President of the Chamber, C. Vajda and A. Kumin (Rapporteur), Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: French.

Judgment

- 1 By its application, the European Commission asks the Court to find:
 - that, by systematically and persistently exceeding the annual limit value for nitrogen dioxide (NO₂) since 1 January 2010 in 12 French agglomerations and air quality zones, namely Marseille (FR03A02), Toulon (FR03A03), Paris (FR04A01), Auvergne-Clermont-Ferrand (FR07A01), Montpellier (FR08A01), Toulouse Midi-Pyrénées (FR12A01), zone urbaine régionale (Regional urban area, ‘ZUR’) Reims Champagne-Ardenne (FR14N10), Grenoble Rhône-Alpes (FR15A01), Strasbourg (FR16A02), Lyon Rhône-Alpes (FR20A01), ZUR Vallée de l’Arve Rhône-Alpes (FR20N10) and Nice (FR24A01), and by systematically and persistently exceeding the hourly limit value for NO₂ since 1 January 2010 in 2 French agglomerations and air quality zones, namely Paris (FR04A01) and Lyon Rhône-Alpes (FR20A01), the French Republic has, since that date, continued to fail to fulfil its obligations under Article 13(1) of Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (OJ 2008 L 152, p. 1), read in conjunction with Annex XI to that directive, since the coming into force of the limit values in 2010, and
 - that the French Republic has failed, since 11 June 2010, to fulfil its obligations under Article 23(1) of Directive 2008/50, read in conjunction with Annex XV to that directive, and in particular the obligation, laid down in the second subparagraph of Article 23(1) of that directive, to ensure that the exceedance period is kept as short as possible.

Legal context

Directive 96/62/EC

- 2 Article 7 of Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management (OJ 1996 L 296, p. 55), headed ‘Improvement of ambient air quality – General requirements’, stated in paragraphs 1 and 3:

‘1. Member States shall take the necessary measures to ensure compliance with the limit values.

...

3. Member States shall draw up action plans indicating the measures to be taken in the short term where there is a risk of the limit values and/or alert thresholds being exceeded, in order to reduce that risk and to limit the duration of such an occurrence. Such plans may, depending on the individual case, provide for measures to control and, where necessary, suspend activities, including motor-vehicle traffic, which contribute to the limit values being exceeded.’

- 3 Article 8 of that directive, headed ‘Measures applicable in zones where levels are higher than the limit value’, provided in paragraphs 1, 3 and 4:

‘1. Member States shall draw up a list of zones and agglomerations in which the levels of one or more pollutants are higher than the limit value plus the margin of tolerance.

...

3. In the zones and agglomerations referred to in paragraph 1, Member States shall take measures to ensure that a plan or programme is prepared or implemented for attaining the limit value within the specific time limit.

The said plan or programme, which must be made available to the public, shall incorporate at least the information listed in Annex IV.

4. In the zones and agglomerations referred to in paragraph 1, where the level of more than one pollutant is higher than the limit values, Member States shall provide an integrated plan covering all the pollutants concerned.'

- 4 Under Article 11 of that directive, headed 'Transmission of information and reports', Member States were required to submit to the Commission annual reports on compliance with the limit values for NO₂ concentrations.

Directive 1999/30/EC

- 5 Under Article 4 of Council Directive 1999/30/EC of 22 April 1999 relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air (OJ 1999 L 163, p. 41), headed 'Nitrogen dioxide and oxides of nitrogen':

'1. Member States shall take the measures necessary to ensure that concentrations of nitrogen dioxide and, where applicable, of oxides of nitrogen, in ambient air, as assessed in accordance with Article 7, do not exceed the limit values laid down in Section I of Annex II as from the dates specified therein.

The margins of tolerance laid down in Section I of Annex II shall apply in accordance with Article 8 of [Directive 96/62].

2. The alert threshold for concentrations of nitrogen dioxide in ambient air shall be that laid down in Section II of Annex II.'

- 6 As a matter of the protection of human health, Annex II to Directive 1999/30 set 1 January 2010 as the date from which the limit values for NO₂ were to be met.
- 7 Under Article 12 of that directive, Member States were required to bring into force the laws, regulations and administrative provisions necessary to comply with that directive by 19 July 2001.

Directive 2008/50

- 8 Directive 2008/50, which entered into force on 11 June 2008, replaces five pre-existing legislative acts relating to the development and management of ambient air quality, in particular Directives 96/62 and 1999/30, which were repealed as from 11 June 2010, as is apparent from Article 31 of Directive 2008/50.
- 9 Annex XI to that directive indicates, however, that the date by which the limit value for NO₂ is to be met is 1 January 2010.
- 10 Article 1 of Directive 2008/50, headed 'Subject matter', states in points 1 to 3:

'This Directive lays down measures aimed at the following:

1. defining and establishing objectives for ambient air quality[,] designed to avoid, prevent or reduce harmful effects on human health and the environment as a whole;
2. assessing the ambient air quality in Member States on the basis of common methods and criteria;

3. obtaining information on ambient air quality in order to help combat air pollution and nuisance and to monitor long-term trends and improvements resulting from national and Community measures’.

11 Article 2 of that directive, headed ‘Definitions’, provides in points 5, 8, 16 to 18 and 24:

‘For the purposes of this Directive:

...

5. “limit value” shall mean a level fixed on the basis of scientific knowledge, with the aim of avoiding, preventing or reducing harmful effects on human health and/or the environment as a whole, to be attained within a given period and not to be exceeded once attained;

...

8. “air quality plans” shall mean plans that set out measures in order to attain the limit values or target values;

...

16. “zone” shall mean part of the territory of a Member State, as delimited by that Member State for the purposes of air quality assessment and management;

17. “agglomeration” shall mean a zone that is a conurbation with a population in excess of 250 000 inhabitants or, where the population is 250 000 inhabitants or less, with a given population density per km² to be established by the Member States;

18. “PM₁₀” shall mean particulate matter which passes through a size-selective inlet as defined in the reference method for the sampling and measurement of PM₁₀, EN 12341, with a 50% efficiency cut-off at 10 µm aerodynamic diameter;

...

24. “oxides of nitrogen” shall mean the sum of the volume mixing ratio (ppbv) of nitrogen monoxide (nitric oxide) and nitrogen dioxide[,], expressed in units of mass concentration of nitrogen dioxide (µg/m³)’.

12 Article 13 of that directive, headed ‘Limit values and alert thresholds for the protection of human health’, provides in paragraph 1:

‘Member States shall ensure that, throughout their zones and agglomerations, levels of sulphur dioxide, PM₁₀, lead and carbon monoxide in ambient air do not exceed the limit values laid down in Annex XI.

In respect of nitrogen dioxide and benzene, the limit values specified in Annex XI may not be exceeded from the dates specified therein.

Compliance with these requirements shall be assessed in accordance with Annex III.

The margins of tolerance laid down in Annex XI shall apply in accordance with Article 22(3) and Article 23(1).’

- 13 Article 22 of that directive, headed ‘Postponement of attainment deadlines and exemption from the obligation to apply certain limit values’, is worded as follows:

‘1. Where, in a given zone or agglomeration, conformity with the limit values for nitrogen dioxide or benzene cannot be achieved by the deadlines specified in Annex XI, a Member State may postpone those deadlines by a maximum of five years for that particular zone or agglomeration, on condition that an air quality plan is established in accordance with Article 23 for the zone or agglomeration to which the postponement would apply; such air quality plan shall be supplemented by the information listed in Section B of Annex XV related to the pollutants concerned and shall demonstrate how conformity will be achieved with the limit values before the new deadline.

2. Where, in a given zone or agglomeration, conformity with the limit values for PM₁₀ as specified in Annex XI cannot be achieved because of site-specific dispersion characteristics, adverse climatic conditions or transboundary contributions, a Member State shall be exempt from the obligation to apply those limit values until 11 June 2011[,] provided that the conditions laid down in paragraph 1 are fulfilled and that the Member State shows that all appropriate measures have been taken at national, regional and local level to meet the deadlines.

3. Where a Member State applies paragraphs 1 or 2, it shall ensure that the limit value for each pollutant is not exceeded by more than the maximum margin of tolerance specified in Annex XI for each of the pollutants concerned.

4. Member States shall notify the Commission where, in their view, paragraphs 1 or 2 are applicable, and shall communicate the air quality plan referred to in paragraph 1[,] including all relevant information necessary for the Commission to assess whether or not the relevant conditions are satisfied. In its assessment, the Commission shall take into account estimated effects on ambient air quality in the Member States, at present and in the future, of measures that have been taken by the Member States[,] as well as estimated effects on ambient air quality of current Community measures and planned Community measures to be proposed by the Commission.

Where the Commission has raised no objections within nine months of receipt of that notification, the relevant conditions for the application of paragraphs 1 or 2 shall be deemed to be satisfied.

If objections are raised, the Commission may require Member States to adjust or provide new air quality plans.’

- 14 Article 23 of Directive 2008/50, headed ‘Air quality plans’, states in paragraph 1:

‘Where, in given zones or agglomerations, the levels of pollutants in ambient air exceed any limit value or target value, plus any relevant margin of tolerance in each case, Member States shall ensure that air quality plans are established for those zones and agglomerations in order to achieve the related limit value or target value specified in Annexes XI and XIV.

In the event of exceedances of those limit values for which the attainment deadline is already expired, the air quality plans shall set out appropriate measures, so that the exceedance period can be kept as short as possible. The air quality plans may additionally include specific measures aiming at the protection of sensitive population groups, including children.

Those air quality plans shall incorporate at least the information listed in Section A of Annex XV and may include measures pursuant to Article 24. Those plans shall be communicated to the Commission without delay, but no later than two years after the end of the year the first exceedance was observed.

Where air quality plans must be prepared or implemented in respect of several pollutants, Member States shall, where appropriate, prepare and implement integrated air quality plans covering all pollutants concerned.'

- 15 Annex XI to Directive 2008/50 sets the following limit values for NO₂:

Averaging Period	Limit value	Margin of tolerance	Date by which limit value is to be met
Nitrogen dioxide			
One hour	200 µg/m ³ , not to be exceeded more than 18 times a calendar year	... 0% by 1 January 2010	1 January 2010
Calendar year	40 µg/m ³	50% on 19 July 1999, decreasing on 1 January 2001 and every 12 months thereafter by equal annual percentages to reach 0% by 1 January 2010	1 January 2010

Pre-litigation procedure

- 16 On 7 March 2012, the French Republic requested, pursuant to Article 22(1) of Directive 2008/50, that the deadline laid down for compliance with the NO₂ limit values be postponed. That request concerned the annual limit values of 24 of France's zones and the hourly limit values of 3 of those zones. By decision of 22 February 2013, the Commission raised objections to that request for postponement, on the basis of Article 22(4) of that directive. That decision was not contested by the French Republic. That Member State was, consequently, obliged to comply with the NO₂ limit values, calculated by hour or by calendar year, from 1 January 2010, in accordance with Annex XI to that directive.
- 17 As the annual NO₂ limit values had been exceeded in many of France's zones since 1 January 2010, on 12 February 2014, the Commission opened a case under the EU Pilot mechanism.
- 18 On 19 June 2015, the Commission sent the French authorities a letter of formal notice, in which it took the view that the French Republic had failed to observe the limit values for NO₂ in 19 of France's zones, set out in Annex I to that letter. The Commission also considered that although that Member State had adopted air quality plans and/or other measures seeking to reduce NO₂ emissions, it had failed to fulfil its obligations under Article 23(1) of Directive 2008/50 and, in particular, the second subparagraph thereof, which requires that the exceedance period be kept as short as possible. Moreover, the Commission noted that the infringement was still ongoing.
- 19 By letter of 3 December 2015 and a further letter of 27 July 2016, the French authorities responded to the Commission's letter of formal notice. In addition, they submitted their annual reports on 30 October 2015 for 2014 and on 22 October 2016 for 2015, respectively.
- 20 As it took the view that the French Republic's response was not satisfactory, on 15 February 2017, the Commission issued a reasoned opinion, which was notified to the French Republic on 16 February 2017, in which it concluded that that Member State had failed, in 13 of France's zones, namely the 12 zones which are the subject of the present action for failure to fulfil obligations and Saint-Étienne Rhône-Alpes (FR29A01), since 1 January 2010, to fulfil its obligations under, on the one hand, Article 13(1) of Directive 2008/50, read in conjunction with Annex XI to that directive, and, on the

other, Article 23(1) of that directive, read in conjunction with Section A of Annex XV thereto. Consequently, the Commission invited the French Republic to take the measures necessary to comply with that reasoned opinion within a period of two months from receipt thereof.

- 21 The French authorities responded to that reasoned opinion by letter of 24 April 2017, supplemented by letters dated 16 October 2017, 8 February 2018 and 19 April 2018, in which those authorities recalled that the exceedance of limit values from 2010 was to be assessed in view, on the one hand, of the structural difficulties which prevent compliance with those values within the period of time allowed by Directive 2008/50, and, on the other, of the efforts which had resulted in a clear improvement in the ambient air quality in the zones concerned.
- 22 A technical meeting was also organised for 8 September 2017. That meeting was followed, on 30 January 2018, by a meeting, organised by the Commission, regarding air quality, involving the ministers responsible for the environment of a number of Member States, including the French Republic, and the Commissioner with responsibility for the matter.
- 23 As it nevertheless considered that the French Republic had failed to take all the measures necessary to fulfil its obligations pursuant to Directive 2008/50, on 11 October 2018, the Commission brought the present action.

The action

First complaint, alleging systematic and persistent infringement of the combined provisions of Article 13(1) of Directive 2008/50 and Annex XI thereto

Arguments of the parties

- 24 By its first complaint, the Commission argues that the French Republic has systematically and persistently breached the obligations arising under Article 13(1) of Directive 2008/50, read in conjunction with Annex XI thereto, given that the annual limits laid down by that directive for NO₂ have been exceeded in the 12 zones and agglomerations referred to in paragraph 1 of the present judgment and that the hourly limits have been exceeded in 2 of those zones, namely Île-de-France-Paris and Lyon Rhône-Alpes.
- 25 The Commission argues that, in paragraph 69 of the judgment of 5 April 2017, *Commission v Bulgaria* (C-488/15, EU:C:2017:267), which concerned ambient air pollution by PM₁₀, which are also covered by Directive 2008/50, the Court held that exceeding the limit values is sufficient for a finding to be made that there has been an infringement of the provisions of Article 13(1) of, in conjunction with Annex XI to, Directive 2008/50. In the present case, the annual reports for 2010 to 2016 sent to the Commission by the French authorities themselves, in accordance with Article 27 of Directive 2008/50, and certain information provided by those authorities during the pre-litigation stage prove such infringement. The provisional data relating to 2017 have been made available by the French authorities, but they have not yet been validated by the Commission's services.
- 26 The French Republic, first of all, puts forward two arguments.
- 27 On the one hand, the French Republic disputes that the exceedances of the NO₂ limit values noted by the Commission, which were recorded by a limited number of measuring stations, all located close to certain major roads, are representative. Those exceedances are therefore not indicative of the air quality throughout the 12 zones and agglomerations concerned, which is improving overall.

- 28 In that context, the French Republic argues that taking the highest value in each zone does not allow a representative picture to be given of changes in the air quality throughout that zone.
- 29 On the other hand, the French Republic considers that the measures which it took are being hampered by the impact of population growth, accentuated by changes in modes of transport. Moreover, the measures to be adopted by Member States, which aim, in particular, to restrict traffic on busy roads, should take account of the features of urbanisation of the zones and agglomerations concerned. It is important that those measures do not cause traffic, and therefore, necessarily, harmful emissions, to be moved towards other urban areas and roads which are unsuitable or of insufficient size, and that they take into account the transport needs of the population. The French Republic emphasises, in that regard, that the discretion which Member States have in transposing Directive 2008/50 must be exercised in compliance with the provisions of the Treaties, in particular the fundamental principle of the free movement of goods and persons, which does not allow, for example, sectoral traffic prohibitions to be introduced.
- 30 Moreover, the development of other mobility solutions requires significant and costly investment, which can be carried out only in the long term. The effectiveness of the measures adopted by the French Republic also depends on the modernisation of the vehicle fleet, which is made difficult by the fact that households are keeping their vehicle for longer and longer.
- 31 The French Republic maintains, in addition, that more onerous rules, such as a rule seeking to increase tax on fuel, cannot currently be contemplated, due to the sensitivity of public opinion on that issue, and may therefore give rise to public unrest. In general, the effectiveness of the measures adopted is dependent on public behaviour and changes in attitudes.
- 32 To conclude these preliminary observations, the French Republic invokes the negligence which the Commission itself displayed in being slow to adopt, at EU level, the measures necessary for the attainment of the objectives pursued by Directive 2008/50. It argues, in particular, that the anticipated effect on NO₂ emissions of the standards introduced at EU level by Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information (OJ 2007 L 171, p. 1) is less significant than the size of the reductions in emissions anticipated when the limit values were set as part of the adoption of Directive 2008/50.
- 33 The French Republic does not call into question the fact that the hourly and annual NO₂ limit values have persistently been exceeded in the zones and agglomerations which are the subject of the action brought by the Commission. However, it disputes the allegedly systematic nature of those exceedances.
- 34 Moreover, the French Republic recalls that the majority of Member States are faced with structural difficulties which make it difficult to comply with the annual NO₂ limit value set by Directive 2008/50.
- 35 In that context, the French Republic argues that account should be taken of the location of the measuring stations, when examining the values registered by those stations, in the light of the fact that some of them are situated closer to NO₂ emission sources than is required by Directive 2008/50. Account should also be taken of the overall improvement in the air quality in France. The French Republic points out, in that regard, that the measures which it took have resulted in a considerable reduction in NO₂ emissions. Throughout France, the number of measuring stations where the annual NO₂ limit value was exceeded was more than halved between 2000 and 2017. From 2010 to 2017, the proportion of urban measuring stations, which are affected by road traffic, which found that the annual NO₂ limit value had been exceeded was halved. Over the same period, the average NO₂ concentration

measured by those urban measuring stations fell twice as fast as for all measuring stations. The proportion of the population exposed to the effects of the exceedance of that limit value therefore decreased.

- 36 The French Republic concludes that, despite the barriers constituted by the structural factors mentioned, an examination of changes in the air quality throughout France reveals a significant fall in NO₂ emissions and concentrations since 2010, as a result of the measures taken by the French authorities.

Findings of the Court

- 37 The complaint alleging infringement of the obligation set out in the first subparagraph of Article 13(1) of Directive 2008/50 must be assessed taking into account the settled case-law according to which the procedure provided for in Article 258 TFEU presupposes an objective finding that a Member State has failed to fulfil its obligations under the FEU Treaty or secondary legislation (judgment of 22 February 2018, *Commission v Poland*, C-336/16, EU:C:2018:94, paragraph 61 and the case-law cited).
- 38 It follows that, in the present case, the fact that the limit values for NO₂ in ambient air were exceeded is sufficient in itself to make it possible to establish an infringement of the provisions of Article 13(1) of Directive 2008/50, in conjunction with those of Annex XI thereto (see, by analogy, judgment of 22 February 2018, *Commission v Poland*, C-336/16, EU:C:2018:94, paragraph 62 and the case-law cited).
- 39 In the present case, the data derived from the annual reports on air quality submitted by the French Republic under Article 27 of Directive 2008/50 show that, from 2010 to 2016 inclusive, that Member State very regularly exceeded, on the one hand, the annual limit values for NO₂ in 12 French agglomerations and zones and, on the other, the hourly limit value for that pollutant in 2 of those agglomerations and zones.
- 40 It follows that the exceedance thus established must be regarded as persistent, as the French Republic has, furthermore, recognised since the pre-litigation stage, but also systematic, without the Commission's being required to provide additional evidence of that exceedance.
- 41 With regard to the argument put forward by the French Republic that the failure to fulfil its obligations under Article 13(1) of Directive 2008/50, read in conjunction with Annex XI thereto, must be assessed in view of the structural difficulties encountered in the transposition of that directive, it must be recalled that, as set out in Annex XI to that directive, the date from which the limit values for NO₂ were to be met was 1 January 2010.
- 42 When it has been objectively found that a Member State has failed to fulfil its obligations under the FEU Treaty or secondary law, it is irrelevant whether the failure to fulfil obligations is the result of intention or negligence on the part of the Member State responsible, or of technical or structural difficulties encountered by it (judgment of 5 April 2017, *Commission v Bulgaria*, C-488/15, EU:C:2017:267, paragraph 76 and the case-law cited).
- 43 Consequently, the French Republic's argument relating to the existence of structural problems cannot be accepted.
- 44 The same applies to that Member State's argument relating to the non-representative nature of the exceedances of the NO₂ limit values. First, with regard to the fact that the Commission took only the annual and hourly values of NO₂ concentration in ambient air from the measuring station which registered the highest values in the zone concerned, it is sufficient to recall that the Court has held that Articles 13(1) and 23(1) of Directive 2008/50 must be interpreted, by reference to the general scheme

and the purpose of the rules of which those provisions form part, as meaning that, in order to establish whether a limit value with an averaging period of one calendar year, as laid down in Annex XI to that directive, has been exceeded, it is sufficient that a pollution level higher than that value be measured at a single sampling point (judgment of 26 June 2019, *Craeynest and Others*, C-723/17, EU:C:2019:533, paragraphs 60, 66 and 68). It follows that the Commission was entitled to take, for each of the 12 zones or agglomerations covered by the present action, the annual and hourly values of NO₂ concentration in ambient air from the measuring station which registered the highest values in the zone or agglomeration concerned.

- 45 With regard, secondly, to the argument that the alleged exceedances were recorded by measuring stations situated as close as possible to major roads, some of which are, moreover, located closer to NO₂ emission sources than is required by Directive 2008/50, it must be observed that, while it is true that the location of sampling points is central to the air quality assessment and improvement system provided for by that directive and that the very purpose of that directive would be compromised if sampling points located in a given zone or agglomeration were not established in accordance with the criteria laid down therein (judgment of 26 June 2019, *Craeynest and Others*, C-723/17, EU:C:2019:533, paragraphs 47 and 49), the French Republic does not dispute that the location of the measuring stations close to major roads is compliant with the criteria for macroscale siting of sampling points defined in Annex III to Directive 2008/50.
- 46 With regard to the French Republic's argument that the need to comply with EU law and, in particular, the free movement of goods limits the discretion of Member States in adopting measures seeking to reduce the NO₂ emissions generated by road traffic, such as a sectoral traffic prohibition, it must be recalled, as is apparent from paragraphs 117, 138 and 140 of the judgment of 21 December 2011, *Commission v Austria* (C-28/09, EU:C:2011:854), that the Court has held that such a sectoral prohibition may be appropriate for attaining the objective of protection of the environment and thus justify an obstacle to the free movement of goods, provided that, in view of the objective thus pursued, no measures exist which are less restrictive of freedom of movement.
- 47 With regard to the argument that the Commission was slow to take the measures necessary for the attainment of the objectives of Directive 2008/50, it must be found that this is not capable of exonerating the French Republic from failure to fulfil its obligations under Article 13(1) of that directive, read in conjunction with Annex XI thereto.
- 48 The French Republic considers, moreover, that the anticipated effect on NO₂ emissions of the standards introduced by Regulation No 715/2007 has turned out to be less significant than the size of the reductions in emissions anticipated when the limit values were set as part of the adoption of Directive 2008/50. In that regard, it must be pointed out, besides the fact that the motor vehicles which are subject to those standards are not the only cause of NO₂ emissions, which the French Republic furthermore recognised, and that the EU rules applicable to the type approval of motor vehicles cannot relieve Member States of their obligation to comply with the limit values set from 1 January 2010 by Directive 2008/50, that the French Republic disregards the fact that, in accordance with the combined provisions of Articles 1(1) and 2(5) of Directive 2008/50, read in the light of recitals 1 to 3 of that directive, the limit values were set not in view of the anticipated effect of the standards introduced by Regulation No 715/2007, but on the basis of the scientific knowledge and experience of Member States so as to reflect the level judged appropriate by the European Union and Member States for the purposes of avoiding, preventing or reducing the harmful effects of air pollutants on human health and the environment as a whole.
- 49 In addition, contrary to what the French Republic claims, a possible partial downward trend highlighted by the data collected, which does not, however, result in compliance by that Member State with the limit values which it is obliged to respect, cannot invalidate the finding of failure to fulfil obligations attributable to the French Republic in that regard (judgment of 22 February 2018, *Commission v Poland*, C-336/16, EU:C:2018:94, paragraph 65).

50 In those circumstances, the first complaint must be upheld.

Second complaint, alleging infringement of Article 23(1) of Directive 2008/50, read in conjunction with Section A of Annex XV thereto

Arguments of the parties

51 By its second complaint, the Commission maintains, in essence, that the French Republic has failed, since 11 June 2010, to fulfil its obligations pursuant to Article 23(1) of Directive 2008/50.

52 The Commission indicates, in that regard, that, while it is true that in the implementation of that provision, the Member State, in its air quality plans, has a degree of discretion in the choice of measures to be taken, those measures must, in any event, ensure that the period during which the limit values are exceeded can be kept as short as possible.

53 In order to determine whether an air quality plan sets out appropriate measures, so that the exceedance period can be kept as short as possible, which requires a case-by-case analysis, the Commission argues that account should be taken of six factors, deduced, in particular, from the case-law referred to in paragraphs 37 and 42 of the present judgment.

54 First, the exceedance of the limit values over a long period and, secondly, the estimated duration of the exceedance of the limit values in the future constitute significant indicators of a failure by the Member State concerned to fulfil its obligation under the second subparagraph of Article 23(1) of Directive 2008/50.

55 Thirdly, account should be taken of the absolute level of the exceedance of the limit values. The greater the difference to be made up in order to comply with the limit value set by Directive 2008/50, in particular in the most recent years, the more a lack of ambition on the part of the measures set out in the plan constitutes an indication of a breach of the obligations referred to in Article 23 of Directive 2008/50.

56 Fourthly, the relative changes in the annual NO₂ concentration in ambient air, in particular in the most recent years, may indicate an infringement of that provision. If that trend is upward or stagnant, that also constitutes a strong indication that the measures set out in the plan are insufficient. Even a downward trend may indicate a breach of the requirements referred to in Article 23 of Directive 2008/50, where the pace of that fall, in relation to the size of the exceedance, is too slow to eliminate the exceedance in the shortest possible period.

57 Fifthly, the formal content of the plans, in particular whether they incorporate all of the information required by Section A of Annex XV to Directive 2008/50, should be taken into consideration. In that regard, the Commission refers to point 113 of the Opinion of Advocate General Kokott in the case which gave rise to the judgment of 5 April 2017, *Commission v Bulgaria* (C-488/15, EU:C:2017:267), from which it is apparent that that information is of central importance.

58 Sixthly, the Commission also suggests that account be taken of the substantive content of the plans, in particular the appropriateness of the measures envisaged in the light of the assessment set out in those plans, the analysis of all possible measures, the geographic and sectoral coverage of the measures chosen in those plans and whether those measures are binding or merely incentivising.

59 The Commission recognises that, in the present case, each of France's 12 zones which are covered by its action were formally the subject of an air quality plan at the expiry of the deadline set in the reasoned opinion, namely 16 April 2017. However, it considers that those plans are ineffective

inasmuch as they have failed to bring an end to the persistent exceedances which have existed in France since 2010. Moreover, after analysing those plans and other measures adopted by the French Republic, as well as the information made available by the authorities of that Member State during the pre-litigation procedure, the Commission, criticising those authorities for their passive attitude and for adopting non-binding measures, claims that the plans at issue do not set out appropriate measures, so that the period during which the NO₂ limit values are exceeded can be kept ‘as short as possible’. In addition, none of those plans mentions the need for structural changes.

- 60 Finally, the Commission argues that various legal acts adopted by the French Republic after 16 April 2017 – the deadline set by the reasoned opinion – confirm that Article 23 of Directive 2008/50 has been infringed.
- 61 The Commission indicates that, on 10 May 2017, the French Republic did, indeed, adopt a plan for the reduction of emissions of atmospheric pollutants, which sets out a number of actions to reduce emissions in all sectors and envisages, in particular, measures to reduce emissions linked to road transport, such as the convergence of the taxation of petrol and diesel, or the promotion of the purchase of clean vehicles. However, it is apparent from that plan that compliance with the limit values will not be achieved until 2030 at the earliest.
- 62 In that context, the Commission recalls that the Conseil d’État (Council of State, France) found, in a judgment of 12 July 2017, that the French legislation transposing Articles 13 and 23 of Directive 2008/50 had been infringed in 16 of France’s zones.
- 63 Moreover, the Commission maintains that it is apparent from the information provided by the French Republic in its letter of 8 February 2018 that, in 2020, 10 measuring stations will still be showing non-compliance, with that figure falling to 3 in 2030, but that no indication is given of the location of those stations. That confirms, in any event, the persistent failure by that Member State, beyond the deadline set in the reasoned opinion, to fulfil its obligations under Article 23 of Directive 2008/50.
- 64 The Commission also argues that a list of additional national measures, in force or announced, was made available to it by the French authorities on 20 April 2018. Nevertheless, no assessment was provided of the impact of those measures and no indication was given of the date by which an end would be brought to the exceedance of the NO₂ limit values throughout the 12 zones covered by the present action.
- 65 Moreover, according to the Commission, the argument put forward by the French Republic, based on the existence of structural difficulties, is not supported by any case-by-case analysis for any of the 12 zones covered by the present action. As it is, in reality, a general argument, it should be rejected as unproven from a factual perspective.
- 66 The Commission also argues that an analysis of the facts presented by the French Republic in its defence confirms that none of the zones at issue is the subject of a plan setting out appropriate measures, so that the period during which the limit values are exceeded can be kept as short as possible. Moreover, the evidence put forward by the French Government relates mostly to actions – which are being envisaged well after the expiry of the deadline for responding to the reasoned opinion – the implementation of which is sometimes planned for more than 15 years after the entry into force of the NO₂ limit values.
- 67 In addition, the Commission rejects the argument that only a small section of the population is affected by the exceedances of the NO₂ limit values, as such an argument is not relevant to Directive 2008/50, which does not contain *de minimis* rules.

- 68 The French Republic invokes structural difficulties encountered in the implementation of the measures taken so that the period during which the NO₂ limit values are exceeded can be kept as short as possible, which have hampered the effectiveness of those measures.
- 69 The French Republic also argues that the Commission misinterprets Article 23(1) of Directive 2008/50, read in conjunction with Annex XV to that directive.
- 70 In that regard, the French Republic disputes the manner in which the Commission relied on the Court's case-law on the exceedance of the limit values for PM₁₀ in ambient air in order to assess the appropriateness of the air quality plans to ensure that the period in which the NO₂ limit values is exceeded can be kept as short as possible, in accordance with Article 23(1) of Directive 2008/50, on the ground that the constraints on measures to tackle emissions of those two pollutants are quite distinct. It claims, in particular, that the Commission failed to take into account, in the necessary case-by-case examination of the appropriateness of the measures taken in view of the requirement that the duration of the exceedance be kept as short as possible, the specific characteristics of NO₂ emissions, the location of the exceedances in urban areas affected by traffic and the structural constraints specific to NO₂ emissions, so that the persistence of the exceedances of the NO₂ limit values since 1 January 2010 does not in itself, and contrary to what the Commission asserts, demonstrate the inappropriateness of those measures.
- 71 The French Republic emphasises, moreover, that the plans at issue, which, contrary to the Commission's opinion, contain proactive and appropriate measures, some of which are binding, have resulted in an overall and very significant improvement in the air quality in France. That improvement is ongoing, even though it has not yet resulted in the elimination of the exceedances of the NO₂ limit values pointed out by the Commission in the present action.
- 72 In so far as the Commission suggests that the air quality plans must indicate the date by which compliance with the limit values set in Annex XI to Directive 2008/50 will be achieved, the French Republic points out that none of the provisions of that directive explicitly require the authorities of Member States to indicate such a date in their plans. Annex XV to that directive provides that the information which must be included in local, regional or national air quality plans for improvement in ambient air quality must include the 'timetable for implementation' and the 'estimate of the improvement of air quality planned and of the expected time required to attain these objectives'. However, that does not mean that those plans must indicate the date by which compliance with the limit values will be achieved. The phrase 'to attain these objectives' refers to the objectives of improving ambient air quality set in those plans, and not to compliance with the limit values set by that annex.
- 73 The French Republic argues that the appropriateness of the air quality plans must be examined on a case-by-case basis in view of the specific local constraints to be overcome in each of the 12 zones or agglomerations at issue and, in that regard, gives an overview of some of the constraints specific to each of the zones and the most recent measures implemented to bring an end to the exceedances of the NO₂ limit values. It thus concludes that it has not failed to fulfil its obligations under Article 23(1) of Directive 2008/50.

Findings of the Court

- 74 Under the second subparagraph of Article 23(1) of Directive 2008/50, where there are exceedances of the limit values for NO₂ for which the attainment deadline has already expired, the Member State concerned is required to establish an air quality plan which meets certain requirements.

- 75 Thus, that plan must set out appropriate measures, so that the exceedance period can be kept as short as possible, and may additionally include specific measures aimed at the protection of sensitive population groups, including children. In addition, according to the third subparagraph of Article 23(1) of Directive 2008/50, that plan must incorporate at least the information listed in Section A of Annex XV to that directive and may include measures pursuant to Article 24 of that directive. That plan must be communicated to the Commission without delay, but no later than two years after the end of the year in which the first exceedance was observed.
- 76 According to the Court's case-law, Article 23(1) of Directive 2008/50 has a general scope, given that it applies, without being limited in time, to breaches of any pollutant limit value established by that directive, after the deadline fixed for its application, whether that deadline is fixed by Directive 2008/50 or by the Commission under Article 22 of the directive (judgment of 5 April 2017, *Commission v Bulgaria*, C-488/15, EU:C:2017:267, paragraph 104).
- 77 In that context, with regard to the French Republic's argument relating to the case-law laid down by the Court in the judgments of 5 April 2017, *Commission v Bulgaria* (C-488/15, EU:C:2017:267), and of 22 February 2018, *Commission v Poland* (C-336/16, EU:C:2018:94), on the exceedance of the limit values for PM₁₀ in ambient air, in order to assess the appropriateness of air quality plans to ensure that the period during which the NO₂ limit values are exceeded can be kept as short as possible, it must be pointed out that the wording of Articles 13 and 23 of Directive 2008/50 refers indiscriminately to all ambient air pollutants to which that directive applies. That case-law can therefore be applied, as a framework for analysis, to assess whether a Member State has complied with its obligations arising under Article 23 of that directive with regard to a pollutant other than particulate matter PM₁₀, provided that that pollutant is covered by that directive.
- 78 It must also be noted that that provision establishes a direct link between, first, the exceedance of the limit values for NO₂, as laid down in the provisions of Article 13(1) of Directive 2008/50, in conjunction with those of Annex XI thereto, and, second, the drawing up of air quality plans (see, to that effect, judgments of 5 April 2017, *Commission v Bulgaria*, C-488/15, EU:C:2017:267, paragraph 83, and of 22 February 2018, *Commission v Poland*, C-336/16, EU:C:2018:94, paragraph 76).
- 79 Those plans may be adopted only on the basis of the balance between the aim of minimising the risk of pollution and the various opposing public and private interests (judgments of 5 April 2017, *Commission v Bulgaria*, C-488/15, EU:C:2017:267, paragraph 106, and of 22 February 2018, *Commission v Poland*, C-336/16, EU:C:2018:94, paragraph 93).
- 80 Therefore, the fact that a Member State exceeds the limit values for NO₂ in ambient air is not in itself sufficient to find that that Member State has failed to fulfil its obligations under the second subparagraph of Article 23(1) of Directive 2008/50 (see, by analogy, judgments of 5 April 2017, *Commission v Bulgaria*, C-488/15, EU:C:2017:267, paragraph 107, and of 22 February 2018, *Commission v Poland*, C-336/16, EU:C:2018:94, paragraph 94).
- 81 It follows from that provision that while Member States have a degree of discretion in deciding which measures to adopt, those measures must, in any event, ensure that the period during which the limit values are exceeded is as short as possible (judgments of 5 April 2017, *Commission v Bulgaria*, C-488/15, EU:C:2017:267, paragraph 109, and of 22 February 2018, *Commission v Poland*, C-336/16, EU:C:2018:94, paragraph 95).
- 82 In those circumstances, it must be ascertained, on the basis of a case-by-case analysis, whether the plans drawn up by the Member State concerned comply with the second subparagraph of Article 23(1) of Directive 2008/50 (judgment of 5 April 2017, *Commission v Bulgaria*, C-488/15, EU:C:2017:267, paragraph 108).

- 83 In this case, the French Republic maintains that the timescales indicated with regard to the measures which it took in the air quality plans which it established are adapted to the scale of the structural changes necessary to bring an end to the exceedances of the limit values for NO₂, highlighting, in particular, on the one hand, the difficulties arising from the significance and the costs of the investments to be carried out and, on the other, the constraints on tackling NO₂ emissions, such as the increase in the number of vehicles due to, among other things, population growth, the fact that the measures necessary for the modernisation of the vehicle fleet can only be implemented over time, the difficulty of making changes to major roads or the sensitivity of public opinion with regard to certain measures such as, in particular, an increase in tax on fuel and the continuing use of motor vehicles.
- 84 It must be observed, in that context, that it was those factors of a general nature that the French Republic mentioned in those plans, without providing further details or carrying out a more in-depth analysis on a case-by-case basis for each of the 12 zones covered by the Commission's action.
- 85 Moreover, it must be recalled that the Court has already held that structural difficulties, arising from the socio-economic and financial challenges of major investments which are to be carried out, were not exceptional and were not such as to rule out the possibility of having set shorter periods (see, by analogy, judgment of 22 February 2018, *Commission v Poland*, C-336/16, EU:C:2018:94, paragraph 101).
- 86 The existence of such structural difficulties, including those linked to constraints on tackling NO₂ emissions, in particular in circumstances where the exceedances noted are located exclusively around major roads, could nevertheless be relevant, in the context of the balance referred to in paragraph 77 of the present judgment, for finding that the exceedance period has been kept as short as possible, in so far as the Member State has taken all appropriate measures to that effect.
- 87 However, it must be pointed out that, in its case-by-case examination of the various zones and agglomerations covered by the present action, the French Republic, although it demonstrated a certain reduction in the level of exceedance in some of the zones and agglomerations concerned, systematically mentioned measures which, on the one hand, fail to provide details of the locations concerned, their timelines and their quantified impact and, on the other, were, for the most part, adopted or envisaged well after the expiry of the deadline for responding to the reasoned opinion or are currently being adopted or planned, sometimes providing for an implementation period of more than 15 years after the entry into force of the limit values for NO₂.
- 88 It must be recalled, in that context, that the Member State concerned has been obliged to establish air quality plans in the event of exceedances of the limit values for NO₂ in ambient air since 11 June 2010. As is apparent from the case file submitted to the Court, exceedances of the limit values had already been noted in France at that date. Consequently, with effect from that date by which the French Republic was required to bring into force the laws, regulations and administrative provisions necessary to comply with Directive 2008/50, in accordance with Article 33(1) thereof, that Member State was required to adopt and put into effect, as quickly as possible, appropriate measures, pursuant to Article 23(1) of that directive.
- 89 In the circumstances referred to in paragraph 87 of the present judgment, it must be pointed out that the French Republic has manifestly failed to adopt, in a timely manner, appropriate measures to ensure that the exceedance period can be kept as short as possible. Thus, the exceedance of the limit values at issue for seven consecutive years in that Member State remains systematic and persistent, despite its obligation to take all appropriate and effective measures to comply with the requirement that the exceedance period be kept as short as possible.

- 90 Such a situation proves of itself, without the need to examine in more detail the content of the air quality plans drawn up by the French Republic, that in the present case that Member State has not implemented appropriate and effective measures to keep the exceedance period for limit values for NO₂ ‘as short as possible’, within the meaning of the second subparagraph of Article 23(1) of Directive 2008/50 (judgment of 5 April 2017, *Commission v Bulgaria*, C-488/15, EU:C:2017:267, paragraph 117).
- 91 It follows that the arguments put forward by the French Republic cannot, in themselves, justify such long periods of time for bringing an end to those exceedances in view of the requirement seeking to ensure that the exceedance period is kept as short as possible.
- 92 In those circumstances, the second complaint invoked by the Commission must be upheld.
- 93 In the light of all the foregoing considerations, it must be found:
- that, by systematically and persistently exceeding the annual limit value for NO₂ since 1 January 2010 in 12 French agglomerations and air quality zones, namely Marseille (FR03A02), Toulon (FR03A03), Paris (FR04A01), Auvergne-Clermont-Ferrand (FR07A01), Montpellier (FR08A01), Toulouse Midi-Pyrénées (FR12A01), ZUR Reims Champagne-Ardenne (FR14N10), Grenoble Rhône-Alpes (FR15A01), Strasbourg (FR16A02), Lyon Rhône-Alpes (FR20A01), ZUR Vallée de l’Arve Rhône-Alpes (FR20N10) and Nice (FR24A01), and by systematically and persistently exceeding the hourly limit value for NO₂ since 1 January 2010 in 2 agglomerations and air quality zones, namely Paris (FR04A01) and Lyon Rhône-Alpes (FR20A01), the French Republic has, since that date, continued to fail to fulfil its obligations under Article 13(1) of Directive 2008/50, read in conjunction with Annex XI to that directive, since the coming into force of the limit values in 2010, and
 - that the French Republic has failed, since 11 June 2010, to fulfil its obligations under Article 23(1) of that directive, read in conjunction with Annex XV to that directive, and in particular the obligation, laid down in the second subparagraph of Article 23(1) of that directive, to ensure that the exceedance period is kept as short as possible.

Costs

- 94 Under Article 138(1) of the Rules of Procedure of the Court, the unsuccessful party shall be ordered to pay the costs if they have been applied for in the successful party’s pleadings. Since the Commission has applied for costs to be awarded against the French Republic and the latter has essentially been unsuccessful, the French Republic must be ordered to pay the costs.

On those grounds, the Court (Seventh Chamber) hereby:

1. **Declares that, by systematically and persistently exceeding the annual limit value for nitrogen dioxide (NO₂) since 1 January 2010 in 12 French agglomerations and air quality zones, namely Marseille (FR03A02), Toulon (FR03A03), Paris (FR04A01), Auvergne-Clermont-Ferrand (FR07A01), Montpellier (FR08A01), Toulouse Midi-Pyrénées (FR12A01), zone urbaine régionale (Regional urban area, 'ZUR') Reims Champagne-Ardenne (FR14N10), Grenoble Rhône-Alpes (FR15A01), Strasbourg (FR16A02), Lyon Rhône-Alpes (FR20A01), ZUR Vallée de l'Arve Rhône-Alpes (FR20N10) and Nice (FR24A01), and by systematically and persistently exceeding the hourly limit value for NO₂ since 1 January 2010 in 2 agglomerations and air quality zones, namely Paris (FR04A01) and Lyon Rhône-Alpes (FR20A01), the French Republic has, since that date, continued to fail to fulfil its obligations under Article 13(1) of Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe, read in conjunction with Annex XI to that directive, since the coming into force of the limit values in 2010;**

Declares that the French Republic has failed, since 11 June 2010, to fulfil its obligations under Article 23(1) of that directive, read in conjunction with Annex XV to that directive, and in particular the obligation, laid down in the second subparagraph of Article 23(1) of that directive, to ensure that the exceedance period is kept as short as possible;

2. **Orders the French Republic to pay the costs.**

[Signatures]