



## Reports of Cases

### JUDGMENT OF THE COURT (Grand Chamber)

22 December 2022\*

(Reference for a preliminary ruling – Environment – Directives 80/779/EEC, 85/203/EEC, 96/62/EC, 1999/30/EC and 2008/50/EC – Air quality – Limit values for microparticles (PM<sub>10</sub>) and nitrogen dioxide (NO<sub>2</sub>) – Exceeded – Air quality plans – Damage caused to an individual on account of deterioration of the air resulting from the exceedance of those limit values – Liability of the Member State concerned – Conditions for establishing that liability – Requirement that the rule of EU law infringed be intended to confer rights on the individuals who have been harmed – No such intention)

In Case C-61/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the cour administrative d'appel de Versailles (Administrative Court of Appeal, Versailles, France), made by decision of 29 January 2021, received at the Court on 2 February 2021, in the proceedings

**JP**

v

**Ministre de la Transition écologique,**

**Premier ministre,**

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, A. Arabadjiev, A. Prechal, E. Regan and L.S. Rossi, Presidents of Chambers, M. Ilešič, J.-C. Bonichot, N. Piçarra, I. Jarukaitis, A. Kumin, N. Jääskinen, N. Wahl, J. Passer (Rapporteur) and O. Spineanu-Matei, Judges,

Advocate General: J. Kokott,

Registrar: V. Giacobbo, Administrator,

having regard to the written procedure and further to the hearing on 15 March 2022,

after considering the observations submitted on behalf of:

– JP, by L. Gimalac, avocat,

\* Language of the case: French.

- the French Government, by T. Stéhelin and W. Zemamta, acting as Agents,
- Ireland, represented by M. Browne, M. Lane and J. Quaney, acting as Agents, and by D. Fennelly, Barrister, and S. Kingston, Senior Counsel,
- the Italian Government, by G. Palmieri, acting as Agent, and by G. Palatiello, avvocato dello Stato,
- the Polish Government, by B. Majczyna and D. Krawczyk, acting as Agents,
- the Netherlands Government, by A. Hanje, acting as Agent,
- the European Commission, by M. Noll-Ehlers and F. Thiran, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 5 May 2022,

gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Article 13(1) and Article 23(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).
- 2 The request has been made in proceedings between JP, on the one hand, and the Ministre de la Transition écologique (Minister for Ecological Transition, France) and the Premier ministre (Prime Minister, France), on the other, concerning JP's applications seeking, inter alia, first, annulment of the implied decision of the Prefect of Val-d'Oise (France) to refuse to take the necessary measures to address his health problems linked to air pollution and, second, compensation from the French Republic for the various heads of damage which JP attributes to that pollution.

### **Legal context**

#### ***European Union law***

##### *Directive 80/779/EEC*

- 3 Article 3 of Council Directive 80/779/EEC of 15 July 1980 on air quality limit values and guide values for sulphur dioxide and suspended particulates (OJ 1980 L 229, p. 30) provided:
  - ‘1. Member States shall take appropriate measures to ensure that as from 1 April 1983 the concentrations of sulphur dioxide and suspended particulates in the atmosphere are not greater than the limit values given in Annex I, without prejudice to the following provisions.
  2. Where a Member State considers that there is a likelihood that, despite the measures taken, the concentrations of sulphur dioxide and suspended particulates in the atmosphere might, after

1 April 1983, exceed in certain zones the limit values given in Annex I, it shall inform the Commission [of the European Communities] thereof before 1 October 1982.

It shall at the same time forward to the Commission plans for the progressive improvement of the quality of the air in those zones. These plans, drawn up on the basis of relevant information on the nature, origin and evolution of the pollution, shall describe in particular the measures taken or to be taken and the procedures implemented or to be implemented by the Member State concerned. These measures and procedures must bring the concentrations of sulphur dioxide and suspended particulates in the atmosphere within these zones to values below or equal to the limit values given in Annex I as soon as possible and by 1 April 1993 at the latest.'

4 Under Article 7(1) and (2) of that directive:

'1. Following the entry into force of this Directive, Member States shall inform the Commission, not later than six months after the end (31 March) of the annual reference period, of instances in which the limit values laid down in Annex I have been exceeded and of the concentrations recorded.

2. They shall also notify the Commission, not later than one year after the end of the annual reference period, of the reasons for such instances and of the measures they have taken to avoid their recurrence.'

5 Annex I to that directive, entitled 'Limit values for sulphur dioxide and suspended particulates', provided in Table B:

'Limit values for suspended particulates (as measured by the black-smoke method <sup>(1)</sup>) expressed in ug/m<sup>3</sup> [micrograms per cubic metre]

Reference period	Limit value for suspended particulates
Year	80 (median of daily mean values taken throughout the year)
Winter (1 October to 31 March)	130 (median of daily mean values taken throughout the winter)
Year (made up of units of measuring periods of 24 hours)	250 <sup>(2)</sup> (98 percentile of all daily mean values taken throughout the year)

<sup>(1)</sup> The results of the measurements of black smoke taken by the OECD method have been converted into gravimetric units as described by the OECD (see Annex III).

<sup>(2)</sup> Member States must take all appropriate steps to ensure that this value is not exceeded for more than three consecutive days. Moreover, Member States must endeavour to prevent and to reduce any such instances in which this value has been exceeded.'

*Directive 85/203/EEC*

- 6 Article 3 of Council Directive 85/203/EEC of 7 March 1985 on air quality standards for nitrogen dioxide (OJ 1985 L 87, p. 1) provided:

‘1. Member States shall take the necessary measures to ensure that as from 1 July 1987 the concentrations of nitrogen dioxide in the atmosphere measured in accordance with Annex III are not greater than the limit value given in Annex I.

2. However, when in particular circumstances the nitrogen dioxide concentrations in the atmosphere in certain zones are likely, despite the measures taken, to exceed the limit value in Annex I after 1 July 1987, the Member State concerned shall inform the Commission thereof before 1 July 1987.

It shall forward plans for the gradual improvement of the quality of the air in these zones to the Commission as soon as possible. These plans, drawn up on the basis of relevant information on the nature, origin and development of this pollution, shall describe, in particular, the measures taken or to be taken and the procedures implemented or to be implemented by the Member State concerned. These measures and procedures must aim at reducing the nitrogen dioxide concentrations in the atmosphere within these zones to values not exceeding the limit value given in Annex I as rapidly as possible and by 1 January 1994 at the latest.’

- 7 Under Article 7(1) and (2) of that directive:

‘1. From 1 July 1987 Member States shall inform the Commission, not later than six months after the end (31 December) of the annual reference period, of instances in which the limit value laid down in Annex I has been exceeded and of the concentrations recorded.

2. Member States shall also notify the Commission, not later than one year after the end of the annual reference period, of the reasons for such instances and of the measures they have taken to deal with them.’

8 Annex I to that directive, entitled ‘Limit value for nitrogen dioxide’, provided:

‘(The value limit shall be expressed in  $\mu\text{g}/\text{m}^3$ . The volume must be standardised at the following conditions of temperature and pressure: 293 °K [Kelvin] and 101.3 kPa [kilopascal])

Reference period <sup>(1)</sup>	Limit value for nitrogen dioxide
Year	200
	98th percentile calculated from the mean values per hour or per period of less than an hour recorded throughout the year <sup>(2)</sup>

<sup>(1)</sup> The annual reference period begins on 1 January in any given calendar year and ends on 31 December.

<sup>(2)</sup> To ensure that the validity of the calculation of the 98th percentile is recognised, 75% of the possible values must be available and, as far as possible, distributed uniformly throughout the year in question for that particular measurement site.

In cases where the values measured on certain sites are not available over a period exceeding 10 days, the calculated percentile must mention this fact.

The calculation of the 98th percentile on the basis of the values recorded throughout the year is to be carried out as follows: the 98th percentile must be calculated from the values actually measured. The measured values should be rounded off to the nearest  $\mu\text{g}/\text{m}^3$ . All the values are to be listed in increasing order for each site:

$$X_1 \leq X_2 \leq X_3 \leq \dots \leq X_k \leq \dots \leq X_{N-1} \leq X_N$$

The 98th percentile is the value of the component of rank k where k is calculated from the following formula:

$$k = (q \times N)$$

where q is equal to 0.98 for the 98th percentile and to 0.50 for the 50th percentile, N being the number of values actually measured. The value of (q x N) should be rounded off to the nearest whole number.

Where measuring equipment does not yet allow the production of discrete values but provides only classes of values higher than  $1 \mu\text{g}/\text{m}^3$ , the Member State concerned may, for the calculation of the percentile, use an interpolation, provided that the interpolation formula is accepted by the Commission and that the classes of values are not higher than  $10 \mu\text{g}/\text{m}^3$ . This temporary waiver is only valid for equipment currently installed for a time span not exceeding the life of the equipment and in any case limited to 10 years from the application of this Directive.’

*Directive 96/62/EC*

9 Article 4 of Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management (OJ 1996 L 296, p. 55), entitled ‘Setting of the limit values and alert thresholds for ambient air’, provided in paragraphs 1 and 5:

‘1. ... the Commission shall submit to the Council [of the European Union] proposals for the setting of limit values and, as appropriate, alert thresholds ...

...

5. In accordance with the Treaty, the Council shall adopt the legislation provided for in paragraph 1 ...’

10 Article 7 of that directive, entitled ‘Improvement of ambient air quality – General requirements’, provided:

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

2. Measures taken in order to achieve the aims of this Directive shall:
  - (a) take into account an integrated approach to the protection of air, water and soil;
  - (b) not contravene Community legislation on the protection of safety and health of workers at work;
  - (c) have no significant negative effects on the environment in the other Member States.
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.'
- 11 Under Article 8 of that directive, entitled 'Measures applicable in zones where levels are higher than the limit value':
  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.

Where no margin of tolerance has been fixed for a specific pollutant, zones and agglomerations in which the level of that pollutant exceeds the limit value shall be treated in the same way as the zones and agglomerations referred to in the first subparagraph, and paragraphs 3, 4 and 5 shall apply to them.
  2. Member States shall draw up a list of zones and agglomerations in which the levels of one or more pollutants are between the limit value and 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.
  5. The Commission shall regularly check the implementation of the plans or programmes submitted under paragraph 3 by examining their progress and the trends in air pollution.
  6. When the level of a pollutant exceeds, or is likely to exceed, the limit value plus the margin of tolerance or, as the case may be, the alert threshold following significant pollution originating in another Member State, the Member States concerned shall consult with one another with a view to finding a solution. The Commission may be present at such consultations.'

12 Article 13(1) of that directive provided:

‘Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 18 months after it comes into force with regard to the provisions relating to Articles 1 to 4 and 12 and Annexes I, II, III and IV, and at the latest on the date on which the provisions referred to in Article 4(5) apply, with regard to the provisions relating to the other Articles.

...’

*Directive 1999/30/EC*

13 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), entitled ‘Nitrogen dioxide and oxides of nitrogen’, provided in paragraph 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/EC.’

14 Article 5 of Directive 1999/30, entitled ‘Particulate matter’, provided in paragraph 1:

‘Member States shall take the measures necessary to ensure that concentrations of PM<sub>10</sub> in ambient air, as assessed in accordance with Article 7, do not exceed the limit values laid down in Section I of Annex III as from the dates specified therein.

The margins of tolerance laid down in Section I of Annex III shall apply in accordance with Article 8 of Directive 96/62/EC.’

15 Article 9 of Directive 1999/30, entitled ‘Repeals and transitional arrangements’, provided:

‘1. [Directive 80/779] shall be repealed with effect from 19 July 2001 except that Articles 1, 2(1), 3(1), 9, 15 and 16 of [Directive 80/779] and Annexes I, IIIb and IV thereto shall be repealed with effect from 1 January 2005.

...

3. [Directive 85/203] shall be repealed with effect from 19 July 2001 except that Articles 1(1), first indent, and (2), 2, first indent, 3(1), 5, 9, 15 and 16 of [Directive 85/203] and Annex I thereto shall be repealed with effect from 1 January 2010.

...’

16 Article 12(1) of Directive 1999/30, entitled ‘Implementation’, was worded as follows:

‘The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 19 July 2001. They shall forthwith inform the Commission thereof.

...'

- 17 Annex II to that directive, entitled 'Limit values for nitrogen dioxide (NO<sub>2</sub>) and oxides of nitrogen (NO<sub>x</sub>) and the alert threshold for nitrogen dioxide', provided:

'I. Limit values for nitrogen dioxide and oxides of nitrogen

Limit values must be expressed in µg/m<sup>3</sup>. The volume must be standardised at a temperature of 293 °K and a pressure of 101.3 kPa.

	Averaging period	Limit value	Margin of tolerance	Date by which limit value is to be met
1. Hourly limit value for the protection of human health	1 hour	200 µg/m <sup>3</sup> NO <sub>2</sub> , not to be exceeded more than 18 times a calendar year	50% on the entry into force of this Directive, reducing on 1 January 2001 and every 12 months thereafter by equal annual percentages to reach 0% by 1 January 2010	1 January 2010
2. Annual limit value for the protection of human health	Calendar year	40 µg/m <sup>3</sup> NO <sub>2</sub>	50% on the entry into force of this Directive, reducing on 1 January 2001 and every 12 months thereafter by equal annual percentages to reach 0% by 1 January 2010	1 January 2010
3. Annual limit value for the protection of vegetation	Calendar year	30 µg/m <sup>3</sup> NO <sub>x</sub>	None	19 July 2001

...'



18 Annex III to that directive, entitled ‘Limit values for particulate matter (PM<sub>10</sub>)’, provided:

	Averaging period	Limit value	Margin of tolerance	Date by which limit value is to be met
STAGE 1				
1. 24-hour limit value for the protection of human health	24 hours	50 µg/m <sup>3</sup> PM <sub>10</sub> , not to be exceeded more than 35 times a calendar year	50% on the entry into force of this Directive, reducing on 1 January 2001 and every 12 months thereafter by equal annual percentages to reach 0% by 1 January 2005	1 January 2005
2. Annual limit value for the protection of human health	Calendar year	40 µg/m <sup>3</sup> PM <sub>10</sub>	20% on the entry into force of this Directive, reducing on 1 January 2001 and every 12 months thereafter by equal annual percentages to reach 0% by 1 January 2005	1 January 2005
STAGE 2 <sup>(1)</sup>				
1. 24-hour limit value for the protection of human health	24 hours	50 µg/m <sup>3</sup> PM <sub>10</sub> , not to be exceeded more than 7 times a calendar year	To be derived from data and to be equivalent to the Stage 1 limit value	1 January 2010
2. Annual limit value for the protection of human health	Calendar year	20 µg/m <sup>3</sup> PM <sub>10</sub>	50% on 1 January 2005 reducing every 12 months thereafter by equal annual percentages to reach 0% by 1 January 2010	1 January 2010
<sup>(1)</sup> Indicative limit values to be reviewed in the light of further information on health and environmental effects, technical feasibility and experience in the application of Stage 1 limit values in the Member States.’				

*Directive 2008/50*

19 Recital 2 of Directive 2008/50 states:

‘In order to protect human health and the environment as a whole, it is particularly important to combat emissions of pollutants at source and to identify and implement the most effective emission reduction measures at local, national and Community level. Therefore, emissions of

harmful air pollutants should be avoided, prevented or reduced and appropriate objectives set for ambient air quality taking into account relevant World Health Organisation standards, guidelines and programmes.’

20 Article 1 of Directive 2008/50, entitled ‘Subject matter’, provides in paragraphs 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’.

21 Article 2 of that directive, entitled ‘Definitions’, provides in paragraphs 5, 7, 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;

...

7. “margin of tolerance” shall mean the percentage of the limit value by which that value may be exceeded subject to the conditions laid down in this Directive;

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 km<sup>2</sup> to be established by the Member States;

18. “PM<sub>10</sub>” shall mean particulate matter which passes through a size-selective inlet as defined in the reference method for the sampling and measurement of PM<sub>10</sub>, 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 ( $\mu\text{g}/\text{m}^3$ ).

22 Article 13 of Directive 2008/50, entitled ‘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,  $\text{PM}_{10}$ , 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).’

23 Article 23 of that directive, entitled ‘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.’

24 Article 31 of that directive, entitled ‘Repeal and transitional provisions’, provides in paragraph 1:

‘Directives 96/62/EC, 1999/30/EC, ... shall be repealed as from 11 June 2010, without prejudice to the obligations on the Member States relating to time limits for transposition or application of those Directives.

...’

25 Article 33 of Directive 2008/50, entitled ‘Transposition’, provides in paragraph 1:

‘Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 11 June 2010. They shall forthwith communicate to the Commission the text of those measures.

...’

26 Article 34 of that directive, entitled ‘Entry into force’, is worded as follows:

‘This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.’

27 In accordance with Annex XI to that directive, entitled ‘Limit values for the protection of human health’:

‘ ...

#### B. Limit values

Averaging Period	Limit value	Margin of tolerance	Date by which limit value is to be met
...			
Nitrogen dioxide			
One hour	200 µg/m <sup>3</sup> , not to be exceeded more than 18 times a calendar year	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
Calendar year	40 µg/m <sup>3</sup>	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
...			
PM <sub>10</sub>			
One day	50 µg/m <sup>3</sup> , not to be exceeded more than 35 times a calendar year	50%	— <sup>(1)</sup>
Calendar year	40 µg/m <sup>3</sup>	20%	— <sup>(1)</sup>
<sup>(1)</sup> Already in force since 1 January 2005			
...			

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

28 JP applied to the tribunal administratif de Cergy-Pontoise (Administrative Court, Cergy-Pontoise, France) seeking, inter alia, first, annulment of the implied decision of the Prefect of Val-d’Oise (France), which is part of the agglomeration of Paris (France), refusing to take the necessary measures to address his health problems linked to air pollution in that agglomeration, problems which began in 2003, and, second, compensation from the French Republic for the various heads of damage which he claims to have suffered on account of that pollution, assessed at EUR 21 million.

- 29 JP seeks compensation, in particular, for damage arising from the deterioration of his state of health, which he argues was caused by the deterioration of the ambient air quality in the Paris agglomeration, where he lives. He considers that the deterioration of the ambient air quality was the result of a breach by the French authorities of their obligations under Directive 2008/50.
- 30 By judgment of 12 December 2017, the tribunal administratif de Cergy-Pontoise (Administrative Court, Cergy-Pontoise) rejected JP's claims in their entirety on the ground, in essence, that Articles 13 and 23 of Directive 2008/50 do not confer any right on individuals to obtain compensation for any damage suffered as a result of the deterioration of air quality.
- 31 By application of 25 April 2018, JP brought an appeal against that judgment before the cour administrative d'appel de Versailles (Administrative Court of Appeal, Versailles, France).
- 32 The Minister for Ecological Transition contends that the appeal should be dismissed.
- 33 In those circumstances, the cour administrative d'appel de Versailles (Administrative Court of Appeal, Versailles) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- '(1) Must the applicable rules of EU law resulting from the provisions of Article 13(1) ... and of Article 23(1) ... of Directive [2008/50] be interpreted as entitling individuals, in the event of a sufficiently serious breach by an EU Member State of the obligations resulting from those rules, to claim compensation from the Member State concerned for damage to their health in cases where there is a direct and certain causal link with the deterioration in air quality?
- (2) On the assumption that the provisions referred to above may indeed give rise to such an entitlement to compensation for damage to health, to what conditions is that entitlement subject, in particular with regard to the date on which the existence of the failure attributable to the Member State concerned must be assessed?'

## Consideration of the questions referred

### *The first question*

- 34 According to settled case-law, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to decide the case before it. To that end, the Court should, where necessary, reformulate the questions referred to it. The Court may also find it necessary to consider provisions of EU law which the national court has not referred to in its questions (judgment of 15 July 2021, *Ministrstvo za obrambo*, C-742/19, EU:C:2021:597, paragraph 31). The fact that a national court has, formally speaking, worded a question referred for a preliminary ruling with reference to certain provisions of EU law does not prevent the Court from providing the national court with all the points of interpretation which may be of assistance in adjudicating on the case pending before it, whether or not that court has referred to them in its questions. In that regard, it is for the Court to extract from all the information provided by the national court, in particular from the grounds of the decision referring the questions, the points of EU law which require interpretation, having regard to the subject matter of the dispute (judgment of 22 June 2022, *Volvo and DAF Trucks*, C-267/20, EU:C:2022:494, paragraph 28).

- 35 In the present case, it follows from the reply provided by the national court to the Court's request for information that the applicant in the main proceedings seeks compensation for damage allegedly caused to him by exceedances of the NO<sub>2</sub> and PM<sub>10</sub> concentration limit values set in Annex XI to Directive 2008/50, which have adversely affected his state of health since 2003.
- 36 It should be noted that, under Article 33(1) and Article 34 of Directive 2008/50, that directive entered into force on the day of its publication in the *Official Journal of the European Union*, namely 11 June 2008, and required Member States to bring into force the laws, regulations and administrative provisions necessary to comply with that directive before 11 June 2010. Furthermore, it follows from Annex XI to that directive that the dates by which the limit values had to be met were 1 January 2005 for PM<sub>10</sub> and 1 January 2010 for NO<sub>2</sub>.
- 37 In accordance with Article 31(1) of Directive 2008/50, that directive replaced Directives 96/62 and 1999/30, among others, with effect from 11 June 2010.
- 38 Directive 96/62 entered into force on 21 November 1996. That directive laid down, in Article 7 and, in accordance with Article 13(1) thereof, read in conjunction with Article 12(1) of Directive 1999/30, with effect from 19 July 2001, requirements similar to those flowing from Article 13(1) and Article 23(1) of Directive 2008/50. However, Directive 96/62 did not set limit values for the concentration of pollutants in ambient air. Under Article 4(5) of that directive, those limit values were set by Directive 1999/30. The dates by which the limit values laid down in Annexes II and III to Directive 1999/30 had to be met, in accordance with Article 4(1) and Article 5(1) thereof, were 1 January 2005 for PM<sub>10</sub> and 1 January 2010 for NO<sub>2</sub>.
- 39 Before those dates, as is clear from Article 9(1) and (3) of Directive 1999/30, the applicable limit values were, subject to the requirements flowing from Article 8(3) and (4) of Directive 96/62, those specified in Annex I, Table B, to Directive 80/779 for PM<sub>10</sub> and in Annex I to Directive 85/203 for NO<sub>2</sub>, annexes to which Article 3 of the latter two directives referred.
- 40 Furthermore, since, according to the information provided by the national court, the applicant in the main proceedings seeks compensation for damage allegedly caused by exceedances of the NO<sub>2</sub> and PM<sub>10</sub> concentration limit values, damage 'which began in 2003', it cannot be ruled out that Article 7 of Directives 80/779 and 85/203, which were repealed, as is also apparent from Article 9(1) and (3) of Directive 1999/30, with effect from 19 July 2001, may also be relevant for the resolution of the dispute in the main proceedings.
- 41 In view of the period to which the national court thus referred in the information supplied, it is therefore necessary to take into account not only the relevant provisions of Directive 2008/50, but also those of Directives 96/62, 1999/30, 80/779 and 85/203.
- 42 Consequently, in the light of the case-law mentioned in paragraph 34 above, it must be considered that, by its first question, the national court seeks to ascertain whether Article 13(1) and Article 23(1) of Directive 2008/50, Articles 7 and 8 of Directive 96/62, Article 4(1) and Article 5(1) of Directive 1999/30 and Articles 3 and 7 of Directives 80/779 and 85/203 must be interpreted as meaning that they are intended to confer rights on individuals capable of entitling them to compensation from a Member State under the principle of State liability for loss and damage caused to individuals as a result of breaches of EU law attributable to that Member State.

- 43 In that regard, it is clear from the Court's settled case-law that the principle of State liability for loss and damage caused to individuals as a result of breaches of EU law for which the State can be held responsible is inherent in the system of the treaties on which the European Union is based (judgment of 18 January 2022, *Thelen Technopark Berlin*, C-261/20, EU:C:2022:33, paragraph 42 and the case-law cited). That principle applies to any case in which a Member State infringes EU law, whichever public authority is responsible for the breach (judgment of 19 December 2019, *Deutsche Umwelthilfe*, C-752/18, EU:C:2019:1114, paragraph 55 and the case-law cited).
- 44 As regards the conditions for establishing such liability, the Court has repeatedly held that individuals who have been harmed have a right to compensation where three conditions are met: the rule of EU law infringed must be intended to confer rights on them; the infringement of that rule must be sufficiently serious; and there must be a direct causal link between that infringement and the loss or damage sustained by those individuals (judgment of 28 June 2022, *Commission v Spain (Breach of EU law by the legislature)*, C-278/20, EU:C:2022:503, paragraph 31 and the case-law cited).
- 45 It follows that only a breach of a rule of EU law which is intended to confer rights on individuals is, in accordance with the first of the three conditions mentioned above, capable of giving rise to State liability.
- 46 According to well-established case-law those rights arise not only where they are expressly granted by provisions of EU law, but also by reason of positive or negative obligations which those provisions impose in a clearly defined manner, whether on individuals, on the Member States or on the EU institutions (see, to that effect, judgments of 5 February 1963, *van Gend & Loos*, 26/62, EU:C:1963:1, p. 12; of 19 November 1991, *Francovich and Others*, C-6/90 and C-9/90, EU:C:1991:428, paragraph 31; of 20 September 2001, *Courage and Crehan*, C-453/99, EU:C:2001:465, paragraph 19; and of 11 November 2021, *Stichting Cartel Compensation and Equilib Netherlands*, C-819/19, EU:C:2021:904, paragraph 47).
- 47 The breach of such positive or negative obligations by a Member State is liable to hinder the exercise by the individuals concerned of the rights implicitly conferred on them under the provisions of EU law in question, rights they are deemed to be able to invoke at national level, and thus to alter the legal situation which those provisions seek to establish for those individuals (see, to that effect, judgments of 4 October 2018, *Kantarev*, C-571/16, EU:C:2018:807, paragraphs 103 and 104, and of 10 December 2020, *Euromin Holdings (Cyprus)*, C-735/19, EU:C:2020:1014, paragraph 90). That is the reason why the full effectiveness of those rules of EU law and the protection of the rights which they are intended to confer require that individuals have the possibility of obtaining redress (see, to that effect, judgment of 19 November 1991, *Francovich and Others*, C-6/90 and C-9/90, EU:C:1991:428, paragraphs 33 and 34) irrespective of whether the provisions in question have direct effect, since direct effect is neither necessary (see, to that effect, judgment of 5 March 1996, *Brasserie du pêcheur and Factortame*, C-46/93 and C-48/93, EU:C:1996:79, paragraphs 18 to 22) nor sufficient in itself (see, to that effect, judgment of 11 June 2015, *Berlington Hungary and Others*, C-98/14, EU:C:2015:386, paragraphs 108 and 109) for the first of the three conditions referred to in paragraph 44 above to be satisfied.
- 48 In the present case, Directives 2008/50, 96/62, 1999/30, 80/779 and 85/203 impose on Member States, in essence, first, an obligation to ensure that the levels of, inter alia, PM<sub>10</sub> and NO<sub>2</sub> do not exceed, in their respective territories and with effect from certain dates, the limit values set by

those directives and, second, where those limit values are nonetheless exceeded, an obligation to provide for appropriate measures to remedy those exceedances, inter alia by means of air quality plans.

- 49 As regards the first obligation, it should be noted that the limit values state the exact concentration, expressed in  $\mu\text{g}/\text{m}^3$  and taking into account, where relevant, the margins of tolerance of the pollutant concerned in ambient air, which Member States must avoid exceeding throughout their zones and agglomerations.
- 50 As regards the second obligation, the Court has held, in the case of Directive 2008/50, that it follows from Article 23(1) of that directive 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 for the pollutant concerned are exceeded is kept as short as possible (judgment of 10 November 2020, *Commission v Italy (Limit values – PM10)*, C-644/18, EU:C:2020:895, paragraph 136).
- 51 Furthermore, it is true that the Court has found that Article 7(3) of Directive 96/62, which lays down a similar obligation to that contained in Article 23(1) of Directive 2008/50, does not impose an obligation on Member States to take measures to ensure that those limit values are never exceeded, but only to take measures capable of reducing to a minimum the risk of the limit values being exceeded and the duration of such an occurrence, taking into account all the material circumstances and opposing interests. However, the Court has also pointed out that that provision included limits on the exercise of that discretion, which may be relied upon before the national courts, relating to the adequacy of the measures which must be included in the action plan with the aim of reducing the risk of the limit values being exceeded and the duration of such an occurrence, taking into account the balance which must be maintained between that objective and the various opposing public and private interests (see, to that effect, judgment of 25 July 2008, *Janecek*, C-237/07, EU:C:2008:447, paragraphs 44 to 46).
- 52 The same interpretation must be given, in essence, with respect to the obligations arising under Article 8(3) and (4) of Directive 96/62.
- 53 As for Article 7 of Directives 80/779 and 85/203, it should be noted that, in the event of exceedance of the limit values, that article required Member States to take measures to ‘avoid their recurrence’ and ‘to deal with them’, respectively.
- 54 It is true that it follows that Article 13(1) and Article 23(1) of Directive 2008/50, like the analogous provisions of Directives 96/62, 1999/30, 80/779 and 85/203, lay down fairly clear and precise obligations as to the result to be achieved by Member States.
- 55 However, those obligations pursue, as is apparent from Article 1 of the directives mentioned in the previous paragraph, as well as, in particular, recital 2 of Directive 2008/50, a general objective of protecting human health and the environment as a whole.
- 56 Thus, besides the fact that the provisions concerned of Directive 2008/50 and the directives which preceded it do not contain any express conferral of rights on individuals in that respect, it cannot be inferred from the obligations laid down in those provisions, with the general objective referred to above, that individuals or categories of individuals are, in the present case, implicitly granted, by reason of those obligations, rights the breach of which would be capable of giving rise to a Member State’s liability for loss and damage caused to individuals.



- 57 It follows from all the foregoing that the first of the three conditions referred to in paragraph 44 above, which are cumulative, is not satisfied.
- 58 That being so, the fact that, where a Member State has not ensured compliance with the limit values set out in Article 13(1) of Directive 2008/50 and the analogous provisions of the earlier directives, the individuals concerned must be able to require the national authorities, if necessary by bringing an action before the courts having jurisdiction, to adopt the measures required under those directives (see, to that effect, judgments of 19 November 2014, *ClientEarth*, C-404/13, EU:C:2014:2382, paragraph 56 and the case-law cited, and of 19 December 2019, *Deutsche Umwelthilfe*, C-752/18, EU:C:2019:1114, paragraph 56) is not capable of altering that finding.
- 59 In that regard, it should be borne in mind that, as regards Article 7(3) of Directive 96/62, the Court has found that the natural or legal persons directly concerned by a risk that the limit values or alert thresholds may be exceeded must be in a position to require the competent authorities to draw up an action plan where such a risk exists, if necessary by bringing an action before the courts having jurisdiction (judgment of 25 July 2008, *Janecek*, C-237/07, EU:C:2008:447, paragraph 39).
- 60 Similarly, as regards the second subparagraph of Article 23(1) of Directive 2008/50, the Court has held that the natural or legal persons directly concerned by the limit values being exceeded after 1 January 2010 must be in a position to require the competent authorities, if necessary by bringing an action before the courts having jurisdiction, to draw up an air quality plan which complies with that provision, where a Member State has failed to secure compliance with the requirements of the second subparagraph of Article 13(1) of that directive and has not applied for a postponement of the deadline as provided for by Article 22 thereof (judgment of 19 November 2014, *ClientEarth*, C-404/13, EU:C:2014:2382, paragraph 56).
- 61 In accordance with the matters set out in paragraphs 52 and 53 above, that interpretation applies equally as regards the effective implementation of Article 7 of Directives 80/779 and 85/203 and Article 8(3) and (4) of Directive 96/62.
- 62 However, the right thus recognised by the Court in its case-law, stemming in particular from the principle of effectiveness of EU law, effectiveness to which affected individuals are entitled to contribute by bringing administrative or judicial proceedings based on their own particular situation, does not mean that the obligations resulting from Article 13(1) and Article 23(1) of Directive 2008/50 and the analogous provisions of the earlier directives were intended to confer individual rights on interested persons, for the purpose of the first of the three conditions referred to in paragraph 44 above, and that the breach of those obligations is, in consequence, capable of altering a legal situation which those provisions sought to establish for those persons.
- 63 It should be added that the conclusion set out in paragraph 57 above does not mean that a Member State cannot incur liability under less strict conditions on the basis of national law (judgment of 28 June 2022, *Commission v Spain (Breach of EU law by the legislature)*, C-278/20, EU:C:2022:503, paragraph 32 and the case-law cited), nor does it prevent, where appropriate, a failure to fulfil the obligations resulting from Article 13(1) and Article 23(1) of Directive 2008/50 or the other provisions of EU law referred to in paragraph 42 above from being taken into account in that regard as a factor which may be relevant for the purposes of establishing the liability of public authorities on a basis other than EU law.

- 64 That conclusion also does not preclude the courts of the Member State concerned from issuing injunctions together with periodic penalties to ensure that that State complies with the obligations arising under Article 13(1) and Article 23(1) of Directive 2008/50 and the analogous provisions of the earlier directives, such as the injunctions coupled with periodic penalties issued in several recent judgments of the Conseil d'État (Council of State, France).
- 65 For all the foregoing reasons, the answer to the first question submitted for a preliminary ruling is that Articles 3 and 7 of Directive 80/779, Articles 3 and 7 of Directive 85/203, Articles 7 and 8 of Directive 96/62, Article 4(1) and Article 5(1) of Directive 1999/30 and Article 13(1) and Article 23(1) of Directive 2008/50 must be interpreted as meaning that they are not intended to confer rights on individuals capable of entitling them to compensation from a Member State under the principle of State liability for loss and damage caused to individuals as a result of breaches of EU law attributable to that Member State.

### *The second question*

- 66 In view of the answer to the first question, there is no need to answer the second question.

### **Costs**

- 67 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 (Grand Chamber) hereby rules:

**Articles 3 and 7 of Council Directive 80/779/EEC of 15 July 1980 on air quality limit values and guide values for sulphur dioxide and suspended particulates, Articles 3 and 7 of Council Directive 85/203/EEC of 7 March 1985 on air quality standards for nitrogen dioxide, Articles 7 and 8 of Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management, Article 4(1) and Article 5(1) 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, and Article 13(1) and Article 23(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,**

**must be interpreted as meaning that they are not intended to confer rights on individuals capable of entitling them to compensation from a Member State under the principle of State liability for loss and damage caused to individuals as a result of breaches of EU law attributable to that Member State.**

[Signatures]