JUDGMENT OF THE COURT (Second Chamber)

19 November 2014 (*)

(Reference for a preliminary ruling — Environment — Air quality — Directive 2008/50/EC — Limit values for nitrogen dioxide — Obligation to apply for postponement of the deadline by submitting an air quality plan — Penalties)

In Case C-404/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Supreme Court of the United Kingdom, made by decision of 16 July 2013, received at the Court on 19 July 2013, in the proceedings

The Queen, on the application of:

ClientEarth

v

The Secretary of State for the Environment, Food and Rural Affairs,

THE COURT (Second Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, K. Lenaerts, Vice-President of the Court, acting as Judge of the Second Chamber, J.-C. Bonichot (Rapporteur), A. Arabadjiev and J.L. da Cruz Vilaça, Judges,

Advocate General: N. Jääskinen,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 10 July 2014,

after considering the observations submitted on behalf of:

– ClientEarth, by P. Kirch, lawyer, D. Rose QC, E. Dixon and B. Jaffey, Barristers;

– the United Kingdom Government, by M. Holt and J. Beeko, acting as Agents, and by K. Smith QC;

– the European Commission, by K. Mifsud-Bonnici and S. Petrova, acting as Agents,

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

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 4 TEU and 19 TEU and Articles 13, 22, 23 and 30 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 ClientEarth, a non-governmental organisation interested in protection of the environment, and the Secretary of State for the Environment, Food and Rural Affairs, concerning that organisation’s request for revision of the air quality plans drawn up by the United Kingdom of Great Britain and Northern Ireland under Directive 2008/50 for certain of its zones and agglomerations.

Legal context

Directive 2008/50

3 Recital 16 in the preamble to Directive 2008/50 is worded as follows:

‘For zones and agglomerations where conditions are particularly difficult, it should be possible to postpone the deadline for compliance with the air quality limit values in cases where, notwithstanding the implementation of appropriate pollution abatement measures, acute compliance problems exist in specific zones and agglomerations. Any postponement for a given zone or agglomeration should be accompanied by a comprehensive plan to be assessed by the Commission to ensure compliance by the revised deadline. The availability of necessary Community measures reflecting the chosen ambition level in the Thematic Strategy on air pollution to reduce emissions at source will be important for an effective emission reduction by the timeframe established in this Directive for compliance with the limit values and should be taken into account when assessing requests to postpone deadlines for compliance.’

4 Article 1 of Directive 2008/50, entitled ‘Subject matter’, provides:

‘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;

…’

5 Article 2 of Directive 2008/50, entitled ‘Definitions’, provides:

‘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;

…’

6 Article 13 of Directive 2008/50, entitled ‘Limit values and alert thresholds for the protection of human health’, provides:

‘1. Member States shall ensure that, throughout their zones and agglomerations, levels of sulphur dioxide, 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).

…’

7 Article 22 of Directive 2008/50, entitled ‘Postponement of attainment deadlines and exemption from the obligation to apply certain limit values’, provides:

‘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.

…

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.’

8 Article 23 of Directive 2008/50, entitled ‘Air quality plans’, provides:

‘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.

2. Member States shall, to the extent feasible, ensure consistency with other plans required under Directive 2001/80/EC, Directive 2001/81/EC or Directive 2002/49/EC in order to achieve the relevant environmental objectives.’

9 Article 30 of Directive 2008/50, entitled ‘Penalties’, provides:

‘Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.’

10 Annex XI to Directive 2008/50, entitled, ‘Limit values for the protection of human health’, fixes, in Section B, the date by which the limit values for nitrogen dioxide may not be exceeded as 1 January 2010.

11 Annexe XV to Directive 2008/50, entitled ‘Information to be included in the local, regional or national air quality plans for improvement in ambient air quality’, gives details, in Section A, of the information to be provided under Article 23 of the directive and, in Section B, of the information to be provided under Article 22(1).

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

12 Nitrogen dioxide is a gas formed by combustion at high temperatures. The order for reference states that road traffic and domestic heating are the main sources of emission in most urban areas of the United Kingdom.

13 For the purposes of assessing and managing air quality in accordance with Directive 2008/50, the territory of the United Kingdom was divided into 43 zones and agglomerations, within the meaning of the directive.

14 In 40 of those zones and agglomerations, one or more of the limit values established by the directive for nitrogen dioxide was exceeded in the course of 2010.

15 According to the draft air quality plans published on 9 June 2011 for public consultation, in 17 zones and agglomerations, including Greater London, compliance with those limit values was expected to be achieved after 2015.

16 On 22 September 2011, final plans were submitted to the Commission, including applications under Article 22 of Directive 2008/50 for time extensions for 24 of the 40 zones or agglomerations in question. Those plans showed how the limit values would be met by 1 January 2015 at the latest.

17 By decision of 25 June 2012, the Commission unconditionally approved 9 applications for time extensions, approved 3 others subject to certain conditions being fulfilled, and raised objections in respect of 12 zones.

18 For 16 zones or agglomerations in respect of which the air quality plans projected compliance with the limit values between 2015 and 2025, the United Kingdom did not make any application for a time extension under Article 22 of Directive 2008/50 and the Commission did not make any comment on those zones or agglomerations.

19 ClientEarth brought a claim in the High Court of Justice of England and Wales, Queen’s Bench Division (Administrative Court), seeking an order requiring the Secretary of State for the Environment, Food and Rural Affairs to revise the plans to ensure that they demonstrate how conformity with the nitrogen dioxide limit values will be achieved as soon as possible, and by 1 January 2015 at the latest, as required by Article 22 of Directive 2008/50.

20 That court dismissed the claim, holding that, even if a Member State has not complied with its obligations under Article 13 of Directive 2008/50, it is not required to apply under Article 22 of the directive for an extension of the deadline laid down by that directive for compliance with the limit values. The court added that, in any event, such an order would raise serious political and economic questions and involve political choices that are not within the court’s jurisdiction.

21 The appeal brought against that decision was dismissed by the Court of Appeal (England and Wales) (Civil Division) on 30 May 2012, which, however, granted ClientEarth permission to appeal to the Supreme Court of the United Kingdom.

22 The latter court held that the United Kingdom was in breach of its obligation to comply with the limit values for nitrogen dioxide under Article 13 of Directive 2008/50 for the 16 zones and agglomerations at issue in the main proceedings. The court also held that the case raised questions of interpretation of Directive 2008/50, which had not been addressed by the case-law of the Court.

23 In those circumstances, the Supreme Court of the United Kingdom decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘1. Where, under [Directive 2008/50], in a given zone or agglomeration conformity with the limit values for nitrogen dioxide was not achieved by the deadline of 1 January 2010 specified in Annex XI of the directive, is

a Member State obliged pursuant to the directive and/or Article 4 TEU to seek postponement of the deadline in accordance with Article 22 of the directive?

2. If so, in what circumstances (if any) may a Member State be relieved of that obligation?

3. To what extent (if at all) are the obligations of a Member State which has failed to comply with Article 13 [of Directive 2008/50] affected by Article 23 (in particular its second paragraph)?

4. In the event of non-compliance with Articles 13 or 22, what (if any) remedies must a national court provide as a matter of European law in order to comply with Article 30 of … Directive [2008/50] and/or Article 4 TEU or 19 TEU?'

Consideration of the questions referred

The first and second questions

24 By its first and second questions, which it is appropriate to consider together, the referring court asks, in essence, (i) whether Article 22 of Directive 2008/50 must be interpreted as meaning that, where conformity with the limit values for nitrogen dioxide laid down in Annex XI to that directive cannot be achieved in a given zone or agglomeration of a Member State by 1 January 2010, the date specified in Annex XI, that State is, in order to be able to postpone that deadline for a maximum of five years, obliged to make an application for postponement in accordance with Article 22(1) of Directive 2008/50 and (ii) whether, if that is the case, the State may nevertheless be relieved of that obligation in certain circumstances.

25 The obligation to comply with the limit values for nitrogen dioxide laid down in Annex XI to Directive 2008/50 by 1 January 2010, the date specified in that annex, results from the second subparagraph of Article 13(1) of the directive.

26 Article 22(1) of Directive 2008/50 provides, however, for the possibility of postponing the deadline initially set where conformity with the limit values cannot be achieved by that deadline, on condition that the Member State concerned establishes an air quality plan for the zone or agglomeration to which the postponement would apply, which meets certain requirements. In particular, the plan must be established in accordance with Article 23 of Directive 2008/50. It must also contain the information listed in Section B of Annex XV relating to the pollutants concerned and demonstrate how conformity with the limit values will be achieved before the new deadline. Under Article 22(4) of Directive 2008/50, those zones, agglomerations and plans must be submitted to the Commission for approval

27 As regards the question whether, in order to be able to postpone by a maximum of five years the deadline specified in Annex XI to Directive 2008/50, the Member State concerned is obliged to make an application and to establish for that purpose such a plan, when the conditions referred to in Article 22(1) of the directive are met, it must be held that, while the wording of that provision does not give clear indications in that respect, it follows both from the context of that provision and the aim pursued by the EU legislature that Article 22(1) must be interpreted to that effect.

28 Article 22(4) of Directive 2008/50 obliges the Member State concerned to notify the Commission of the zones and the agglomerations to which it considers Article 22(1) applies and to submit the air quality plan referred to in the latter provision.

29 Next, that is the interpretation most suited to achieving the aim pursued by the EU legislature of ensuring better ambient air quality because it obliges the Member State concerned to anticipate that conformity with the limit values will not be achieved by the deadline specified and to formulate an air quality plan giving details of measures that are capable of remedying that pollution by a later deadline.

30 However, it should be noted that while, as regards sulphur dioxide, PM_{10}, lead and carbon monoxide, the first subparagraph of Article 13(1) of Directive 2008/50 provides that Member States are to 'ensure' that the limit values are not exceeded, the second subparagraph of Article 13(1) states that, as regards nitrogen dioxide and benzene, the limit values 'may not be exceeded' after the specified deadline, which amounts to an obligation to achieve a certain

result.

31 Consequently, Member States must take all the measures necessary to secure compliance with that requirement and cannot consider that the power to postpone the deadline, which they are afforded by Article 22(1) of Directive 2008/50, allows them to defer, as they wish, implementation of those measures.

32 As recital 16 in the preamble to Directive 2008/50 makes clear, that provision allows the deadline initially specified by the directive to be postponed only where, notwithstanding the implementation of appropriate pollution abatement measures, ‘acute compliance problems’ exist in specific zones and agglomerations.

33 In those circumstances, Article 22(1) of Directive 2008/50 must be interpreted as meaning that, in order to be able to postpone by a maximum of five years the deadline specified by the directive for achieving conformity with the limit values for nitrogen dioxide specified in Annex XI thereto, a Member State is required to make an application for postponement when it is objectively apparent, having regard to existing data, and notwithstanding the implementation by that Member State of appropriate pollution abatement measures, that conformity with those values cannot be achieved in a given zone or agglomeration by the specified deadline.

34 As regards the question of whether certain circumstances may nevertheless justify a failure to comply with that obligation, it suffices to observe that Directive 2008/50 does not contain any exception to the obligation flowing from Article 22(1).

35 Consequently, the answer to the first and second questions is that Article 22(1) of Directive 2008/50 must be interpreted as meaning that, in order to be able to postpone by a maximum of five years the deadline specified by the directive for achieving conformity with the limit values for nitrogen dioxide specified in Annex XI thereto, a Member State is required to make an application for postponement and to establish an air quality plan when it is objectively apparent, having regard to existing data, and notwithstanding the implementation by that Member State of appropriate pollution abatement measures, that conformity with those values cannot be achieved in a given zone or agglomeration by the specified deadline. Directive 2008/50 does not contain any exception to the obligation flowing from Article 22(1).

The third question

36 By its third question, the referring court asks, in essence, whether, where it is apparent that conformity with the limit values for nitrogen dioxide established in Annex XI to Directive 2008/50 cannot be achieved in a given zone or agglomeration of a Member State by 1 January 2010, the date specified in that annex, and that Member State has not applied for postponement of that deadline under Article 22(1) of Directive 2008/50, the fact that an air quality plan which complies with the second subparagraph of Article 23(1) of the directive has been drawn up permits the view to be taken that that Member State has nevertheless met its obligations under Article 13 of the directive.

37 At the outset, it should be recalled that the second subparagraph of Article 23(1) of Directive 2008/50 specifies that it applies when the limit values for pollutants are exceeded after the deadline laid down for attainment of those limit values.

38 In addition, as regards nitrogen dioxide, application of that provision is not made conditional on the Member State having previously attempted to obtain postponement of the deadline under Article 22(1) of Directive 2008/50.

39 Consequently, the second subparagraph of Article 23(1) of Directive 2008/50 also applies in circumstances such as those arising in the main proceedings, in which conformity with the limit values for nitrogen dioxide established in Annex XI to the directive is not achieved by 1 January 2010, the date specified in that annex, in zones or agglomerations of a Member State and that Member State has not applied for postponement of that date under Article 22(1) of the directive.

40 It follows, next, from the second subparagraph of Article 23(1) of Directive 2008/50 that where the limit values for nitrogen dioxide are exceeded after the deadline laid down for their attainment, the Member State concerned is required to establish an air quality plan that meets certain requirements.

41 Thus, that plan must set out appropriate measures so that the period during which the limit values are exceeded can be kept as short as possible and may also include specific measures aimed at protecting sensitive population groups,

including children. Furthermore, under the third subparagraph of Article 23(1) of Directive 2008/50, that plan is to incorporate at least the information listed in Section A of Annex XV to the directive, may also include measures pursuant to Article 24 of the directive and must be communicated to the Commission without delay, and no later than two years after the end of the year in which the first breach of the limit values was observed.

42 However, an analysis which proposes that a Member State would, in circumstances such as those in the main proceedings, have entirely satisfied its obligations under the second subparagraph of Article 13(1) of Directive 2008/50 merely because such a plan has been established, cannot be accepted.

43 First, it must be observed that only Article 22(1) of Directive 2008/50 expressly provides for the possibility of a Member State postponing the deadline laid down in Annex XI to the directive for achieving conformity with the limit values for nitrogen dioxide established in that annex.

44 Second, such an analysis would be liable to impair the effectiveness of Articles 13 and 22 of Directive 2008/50 because it would allow a Member State to disregard the deadline imposed by Article 13 under less stringent conditions than those imposed by Article 22.

45 Article 22(1) of Directive 2008/50 requires that the air quality plan contains not only the information that must be provided under Article 23 of the directive, which is listed in Section A of Annex XV thereto, but also the information listed in Section B of Annex XV, concerning the status of implementation of a number of directives and on all air pollution abatement measures that have been considered at the appropriate local, regional or national level for implementation in connection with the attainment of air quality objectives. That plan must, furthermore, demonstrate how conformity with the limit values will be achieved before the new deadline.

46 Finally, this interpretation is also supported by the fact that Articles 22 and 23 of Directive 2008/50 are, in principle, to apply in different situations and are different in scope.

47 Article 22(1) of the directive applies where conformity with the limit values of certain pollutants ‘cannot’ be achieved by the deadline initially laid down by Directive 2008/50, account being taken, as is clear from recital 16 in the preamble to the directive, of a particularly high level of pollution. Moreover, that provision allows the deadline to be postponed only where the Member State is able to demonstrate that it will be able to comply with the limit values within a further period of a maximum of five years. Article 22(1) has, therefore, only limited temporal scope.

48 By contrast, Article 23(1) of Directive 2008/50 has a more general scope because 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(1) of the directive.

49 In the light of the foregoing, the answer to the third question is that, where it is apparent that conformity with the limit values for nitrogen dioxide established in Annex XI to Directive 2008/50 cannot be achieved in a given zone or agglomeration of a Member State by 1 January 2010, the date specified in that annex, and that Member State has not applied for postponement of that deadline under Article 22(1) of Directive 2008/50, the fact that an air quality plan which complies with the second subparagraph of Article 23(1) of the directive has been drawn up does not, in itself, permit the view to be taken that that Member State has nevertheless met its obligations under Article 13 of the directive.

The fourth question

50 By its fourth question, the referring court asks, in essence, whether Articles 4 TEU and 19 TEU and Article 30 of Directive 2008/50 must be interpreted as meaning that, where a Member State has failed to comply with the requirements of the second subparagraph of Article 13(1) of Directive 2008/50 and has not applied for a postponement of the deadline as provided for by Article 22 of the directive, it is for the national court having jurisdiction, should a case be brought before it, to take, with regard to the national authority, any necessary measure, such as an order in the appropriate terms, so that the authority establishes the plan required by the directive in accordance with the conditions laid down by the latter.

51 As a preliminary point, it should be noted that the reason why the interpretation of Article 30 of Directive 2008/50, which relates to the system of penalties that must be implemented by the Member States, is relevant to the dispute in

the main proceedings, is not sufficiently clear from the file submitted to the Court.

52 As regards Article 4 TEU, it should be recalled that according to settled case-law, under the principle of sincere cooperation laid down in paragraph 3 of that article, it is for the Member States to ensure judicial protection of an individual's rights under EU law (see, to that effect, inter alia the judgment in *Unibet*, C-432/05, EU:C:2007:163, paragraph 38). In addition, Article 19(1) TEU requires Member States to provide remedies sufficient to ensure effective legal protection in the fields covered by EU law.

53 If the limit values for nitrogen dioxide are exceeded after 1 January 2010 in a Member State that has not applied for a postponement of that deadline under Article 22(1) of Directive 2008/50, the second subparagraph of Article 23(1) of that directive imposes a clear obligation on that Member State to establish an air quality plan that complies with certain requirements (see, by analogy, judgment in *Janecek*, C-237/07, EU:C:2008:447, paragraph 35).

54 In addition, the Court has consistently held that individuals are entitled, as against public bodies, to rely on the provisions of a directive which are unconditional and sufficiently precise. It is for the competent national authorities and courts to interpret national law, as far as possible, in a way that is compatible with the purpose of that directive. Where such an interpretation is not possible, they must disapply the rules of national law which are incompatible with the directive concerned (see, to that effect, judgment in *Janecek*, EU:C:2008:447, paragraph 36 and the case-law cited.)

55 Lastly, as the Court of Justice has noted on numerous occasions, it is incompatible with the binding effect that Article 288 TFEU ascribes to Directive 2008/50 to exclude, in principle, the possibility of the obligation imposed by that directive being relied on by the persons concerned. That consideration applies particularly in respect of a directive whose objective is to control and reduce atmospheric pollution and which is designed, therefore, to protect public health (see, to that effect, judgment in *Janecek*, EU:C:2008:447, paragraph 37).

56 It follows 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 establish an air quality plan which complies with the second subparagraph of Article 23(1) of Directive 2008/50, where a Member State has failed to secure compliance with the requirements of the second subparagraph of Article 13(1) of Directive 2008/50 and has not applied for a postponement of the deadline as provided for by Article 22 of the directive (see, by analogy, judgment in *Janecek*, EU:C:2008:447, paragraph 39).

57 As regards the content of the plan, it follows from the second subparagraph of Article 23(1) of Directive 2008/50 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.

58 The answer to the fourth question is therefore that, where a Member State has failed to comply with the requirements of the second subparagraph of Article 13(1) of Directive 2008/50 and has not applied for a postponement of the deadline as provided for by Article 22 of the directive, it is for the national court having jurisdiction, should a case be brought before it, to take, with regard to the national authority, any necessary measure, such as an order in the appropriate terms, so that the authority establishes the plan required by the directive in accordance with the conditions laid down by the latter.

Costs

59 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 (Second Chamber) hereby rules:

1. **Article 22(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, in order to be able to postpone by a maximum of five years the deadline specified by the directive for achieving conformity with the limit values for nitrogen dioxide specified in Annex XI thereto, a Member State is required to**

make an application for postponement and to establish an air quality plan when it is objectively apparent, having regard to existing data, and notwithstanding the implementation by that Member State of appropriate pollution abatement measures, that conformity with those values cannot be achieved in a given zone or agglomeration by the specified deadline. Directive 2008/50 does not contain any exception to the obligation flowing from Article 22(1).

2. **Where it is apparent that conformity with the limit values for nitrogen dioxide established in Annex XI to Directive 2008/50 cannot be achieved in a given zone or agglomeration of a Member State by 1 January 2010, the date specified in that annex, and that Member State has not applied for postponement of that deadline under Article 22(1) of Directive 2008/50, the fact that an air quality plan which complies with the second subparagraph of Article 23(1) of the directive has been drawn up, does not, in itself, permit the view to be taken that that Member State has nevertheless met its obligations under Article 13 of the directive.**

3. **Where a Member State has failed to comply with the requirements of the second subparagraph of Article 13(1) of Directive 2008/50 and has not applied for a postponement of the deadline as provided for by Article 22 of the directive, it is for the national court having jurisdiction, should a case be brought before it, to take, with regard to the national authority, any necessary measure, such as an order in the appropriate terms, so that the authority establishes the plan required by the directive in accordance with the conditions laid down by the latter.**

[Signatures]

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* Language of the case: English.