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Judgment of the Court of Justice in Case C-237/07

Dieter Janecek v Freistaat Bayern

WHERE THERE IS A RISK THAT THE LIMIT VALUES FOR PARTICULATE MATTER MAY BE EXCEEDED, PERSONS DIRECTLY CONCERNED CAN REQUIRE THE COMPETENT AUTHORITIES TO DRAW UP AN ACTION PLAN

The Member States are obliged only to take such measures in the short term in an action plan as are capable of reducing to a minimum the risk that limit values may be exceeded and of ensuring a gradual return to a level below those values

The Community directive on ambient air quality assessment and management¹ provides that the Member States are to draw up action plans indicating the measures to be taken in the short term where there is a risk that the limit values and/or alert thresholds may be exceeded, in order to reduce that risk and to limit the duration of such an occurrence.

Mr Janecek lives on the Landshuter Allee on Munich's central ring road, approximately 900 metres north of an air quality measuring station. Measurements taken at that station have shown that, in 2005 and 2006, the limit value fixed for emissions of particulate matter was exceeded much more than 35 times, even though that is the maximum number of instances permitted under the German Federal law on combating pollution.

Mr Janecek brought an action for an order requiring the Freistaat Bayern to draw up an air quality action plan in the Landshuter Allee district, so as to determine the measures to be taken in the short term in order to ensure compliance with the maximum permitted number of instances – 35 per year – of the limit value for particulate matter emissions being exceeded.

As his application was dismissed at first instance, Mr Janecek appealed to the Verwaltungsgerichtshof (Higher Administrative Court), which held that residents concerned may require the competent authorities to draw up an action plan, but that they are not entitled to insist that it must include the particular measures that would guarantee compliance in the short term with emission limit values.

Mr Janecek and the Freistaat Bayern appealed to the Bundesverwaltungsgericht (Federal Administrative Court) against that judgment. According to that court, Mr Janecek cannot, under

¹ Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management (OJ 1996 L 296, p. 55), as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003 (OJ 2003 L 284, p. 1).

national law alone, rely on any entitlement to have an action plan drawn up. The Bundesverwaltungsgericht none the less asked the Court of Justice whether, under Community law, an individual can require the competent national authorities to draw up an action plan where there is a risk that the limit values or alert thresholds may be exceeded.

In today's judgment the Court answers in the affirmative. It observes that it is incompatible with the binding effect of the directive to exclude, in principle, the possibility of the obligation which it imposes being relied on by the persons concerned.

Therefore, where there is a risk that the alert thresholds or limit values may be exceeded, persons directly concerned must be in a position to require the competent national authorities to draw up an action plan, even though, under national law, those persons may have other courses of action available to them for requiring the competent authorities to take measures to combat atmospheric pollution.

With regard to the content of the action plans, the Court notes that the Member States are not obliged to take measures to ensure that the limit values or alert thresholds are never exceeded. They are obliged, subject to judicial review by the national courts, only to take such measures in the short term in an action plan as are capable of reducing to a minimum the risk that the limit values or alert thresholds may be exceeded and of ensuring a gradual return to a level below those values, taking into account the factual circumstances and all opposing interests.

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Languages available: DE EN FR IT

The full text of the judgment may be found on the Court's internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-237/07>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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*Pictures of the delivery of the judgment are available on EbS "Europe by Satellite",
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