



Advocate General Kokott proposes that the Court of Justice should rule that national courts must, on application by affected individuals, examine whether air sampling points were sited in accordance with the criteria set out in EU law

The limit values for sulphur dioxide, nitrogen dioxide, PM10, lead, benzene and carbon monoxide are exceeded where an exceedance has been established at one single sampling point

A number of residents of the Belgian Brussels-Capital Region and the environmental organisation ClientEarth are in dispute with the Brussels-Capital Region and the Brussels Institute for Management of the Environment before the Dutch-speaking Court of First Instance of Brussels as to whether an adequate air quality plan has been established for the Brussels zone.

In that regard, the Brussels court asks the Court of Justice to interpret the relevant EU law, in particular the directive on ambient air quality and cleaner air for Europe.¹ It seeks to clarify, first, the extent to which national courts may review the siting of sampling points and, second, whether the results from different sampling points may be averaged in order to assess compliance with the limit values.

As regards the first question, Advocate General Juliane Kokott observes in today's Opinion that, **under the directive, fixed sampling points are to be sited in particular in areas where the highest concentrations** of sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter (PM 10, PM 2.5), lead, benzene and carbon monoxide **occur**, to which the population is likely to be exposed for a significant period. Moreover, the dimensions of those areas are defined in greater detail in the directive.

While the competent authorities enjoy discretion in the complex scientific assessment and the weighing-up that they have to carry out when siting sampling points, EU law however requires judicial review that ensures the protection of the life and health of residents intended by the directive.

Reasonable scientific doubts must already be weighted when identifying the best available method for the siting of sampling points. What effort to remove them is justified must also be weighed up. For both aspects, **the national courts may not restrict themselves to identifying manifest errors, on account of the importance of the rules on ambient air quality for human life and health.**

Rather, it is for the competent authorities to convince the courts in particular by presenting substantiated arguments. These must be mainly scientific in nature, but may be extended to economic aspects in the weighing up exercise. The other party is free to counter such claims with its own scientifically substantiated arguments. Of course, it is also conceivable for the court to have recourse to independent experts in order to find support in appraising such a scientific dispute. If the authorities

¹ 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), as amended by Commission Directive (EU) 2015/1480 of 28 August 2015 (OJ 2015 L 226, p. 4).

are unable to allay the doubts, they must undertake additional investigations, for example by taking further measurements or applying other models of the development of ambient air quality.

If the national courts have powers to impose orders, they may order such further investigations. If, however, the courts are permitted only to annul administrative decisions, there must be an obligation on the authorities to draw the necessary conclusions from such annulment and the grounds of the decision.

Advocate General Kokott therefore proposes that the Court of Justice should rule that the answer to the first question is that national courts must, on application by affected individuals, examine whether fixed sampling points were sited in accordance with the criteria set out in the directive² and, if they were not, must take all necessary measures within the scope of their judicial powers against the national authority with a view to ensuring that sampling points are sited in accordance with those criteria.

Such a judicial decision may give rise to the obligation to site sampling points at certain locations if it is clear from the available information that sampling points must be sited there. Otherwise the competent authorities may be obliged to undertake investigations in order to identify the correct location.

As regards the second question, in Advocate General Kokott's view, the legislative context of the directive and its purpose to protect human health clearly indicate that compliance with the limit values for sulphur dioxide, nitrogen dioxide, PM10, lead, benzene and carbon monoxide should be assessed by reference to the measurement results from the fixed sampling points, without obtaining an average from all the sampling points.

There is a risk of adverse effects on health wherever the limit values are exceeded. Appropriate measures must be taken there in order to prevent adverse effects. It is only of limited importance to that risk whether an exceedance applies to the entire zone or agglomeration on average. This is clearly illustrated by the joke about the statistician who drowns in a lake even though it averages only a few centimetres in depth.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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² Annex III, point B.1.(a).