



Press and Information

Court of Justice of the European Union

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Judgment in Joined Cases C-165/09 to C-167/09
Stichting Natuur en Milieu and Others v College van Gedeputeerde Staten
van Groningen and College van Gedeputeerde Staten van Zuid-Holland

The Member States were granted wide flexibility when developing programmes for the progressive reduction of emissions of pollutants

A permit granted for an industrial installation must be appraised on the basis of an overall assessment, taking account of all the policies and measures adopted in the national territory

The IPPC Directive¹ lays down the principles governing the procedures and conditions for the grant of permits to construct and operate large industrial installations. In order to achieve a high level of protection for the environment, this directive provides that any permit must include emission limit values for the polluting substances likely to be emitted from the installation concerned. The NEC Directive² introduced a system of national ceilings for emissions of certain pollutants³. In this context, the Member States had to ensure that those ceilings were not exceeded after 2010, by means of programmes for the progressive reduction of emissions of the pollutants covered.

In the present instance, actions were brought before the Raad van State (Council of State, Netherlands) concerning permits for the construction and operation of three power stations fuelled by pulverised coal and biomass, namely the permit granted to RWE Power AG for a power station in Eemsmond, in the province of Groningen, and two permits granted respectively to Electrabel Nederland N.V. and E.On Benelux N.V. relating to power stations in Rotterdam, in the province of Zuid-Holland.

In those actions, environmental organisations⁴ and a number of citizens⁵ submitted in essence that, given the fact that the emission ceilings laid down for the Netherlands by the NEC Directive could not be complied with at the end of 2010, the competent authorities should not have granted the permits covered by the IPPC Directive or should, at least, have granted them subject to stricter conditions.

In those circumstances, the Raad van State decided to ask the Court of Justice to interpret those two directives.

As regards whether, when granting an environmental permit for the construction and operation of an industrial installation, the competent national authorities are obliged to include among the conditions for grant of that permit the national emission ceilings for pollutants laid down by the NEC Directive, **the Court answers in the negative**. It points out, however, that the Member States must comply with the obligation arising from the NEC Directive to adopt or envisage, within the framework of national programmes, appropriate and coherent policies and measures capable of reducing, as a whole, emissions of those pollutants.

¹ Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (OJ 2008 L 24, p. 8).

² Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants (OJ 2001 L 309, p. 22).

³ Namely, emissions of sulphur dioxide, nitrogen oxides, volatile organic compounds and ammonia.

⁴ Stichting Natuur en Milieu, Stichting Greenpeace Nederland and Stichting Zuid-Hollandse Milieufederatie.

⁵ Vereniging van verontruste burgers van Voorne (Association of Concerned Citizens of Voorne), Mr and Mrs B. Meijer, E. Zwaag and F. Pals.

The national court also asked what obligations were owed by the Member States under the NEC Directive during the transitional period (from 27 November 2002, when the period for transposition expired, until 31 December 2010, the deadline after which the Member States had to comply with the emission ceilings) and whether the competent national authorities might be obliged to refuse or to attach restrictions to the grant of an environmental permit, or to adopt specific compensatory measures, where the national emission ceilings were exceeded or risked being exceeded.

In this regard, the Court of Justice rules that, during the transitional period provided for by the NEC Directive, the Member States had to refrain from taking any measures liable seriously to compromise the attainment of the result prescribed by that directive. It is for the national court to review whether this obligation has been complied with. The Court nevertheless points out that, in light of the system established by the NEC Directive, **such a review must necessarily be conducted on the basis of an overall assessment, taking account of all the policies and measures adopted in the national territory concerned.**

It follows that **a simple specific measure relating to a single source of pollutants, consisting in the decision to grant an environmental permit for the construction and operation of an industrial installation, does not appear liable, in itself, seriously to compromise the result prescribed by the NEC Directive**, namely not exceeding by 2010 at the latest the national ceilings laid down in that directive. This conclusion applies all the more where, in circumstances such as those in this instance, the installation in question is not to be brought into operation until 2012 at the earliest.

So far as concerns positive obligations owed by the Member States during the transitional period from 27 November 2002 to 31 December 2010, the Court observes that, as set out in the NEC Directive, the Member States had to draw up programmes for the progressive reduction of the emissions, which they were obliged to make available to the public and appropriate organisations by means of clear, comprehensible and easily accessible information and to notify to the Commission within the time-limit prescribed.

As regards the specific content of those national programmes, the Court finds that the wide flexibility accorded to the Member States by the NEC Directive prevented limits from being placed upon them in the development of the programmes and their thus being obliged to adopt or to refrain from adopting specific measures or initiatives for reasons extraneous to assessments of a strategic nature which took account globally of the factual circumstances and the various competing public and private interests. The imposition of any requirements to that effect would run counter to the intention of the European Union legislature, whose aim in particular was to allow the Member States to strike a certain balance between the various interests involved. Furthermore, that would result in excessive constraints being placed on the Member States, which would accordingly be contrary to the principle of proportionality.

Therefore, the Court concludes that, during the transitional period from 27 November 2002 to 31 December 2010, the Member States were not obliged to refuse or to attach restrictions to the grant of an environmental permit such as the permits at issue, or to adopt specific compensatory measures for each permit granted of that kind, even where the national emission ceilings for the pollutants concerned were exceeded or risked being exceeded.

The Court holds, finally, that individuals could not rely directly before a national court upon the NEC Directive to claim, before 31 December 2010, that the competent authorities should refuse, or attach restrictions when deciding to grant, an environmental permit, or adopt specific compensatory measures following the grant of such a permit.

On the other hand, individuals directly concerned could rely upon the NEC Directive before the national courts in order to claim that, during the transitional period from 27 November 2002 to 31 December 2010, the Member States should adopt or envisage, within the framework of national programmes, appropriate and coherent policies and measures capable of reducing, as a whole, emissions of the pollutants covered so as to comply with the national ceilings laid down in that directive by the end of 2010 at the latest, and should make the programmes drawn up for those

purposes available to the public and appropriate organisations by means of clear, comprehensible and easily accessible information.

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 European Union 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 judgment is published on the CURIA website on the day of delivery.

Press contact: Christopher Fretwell ☎ (+352) 4303 3355