



Press and Information

Court of Justice of the European Union  
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Judgment in Case C-404/13  
The Queen, on the application of ClientEarth v The Secretary of State for the  
Environment, Food and Rural Affairs

## **The Court clarifies Member States' obligations as regards respecting the limit values for nitrogen dioxide**

*When a Member State finds that the limit values cannot be respected before the deadline fixed by the Air Quality Directive and wishes to postpone that deadline for a maximum of five years, that Member State is required to make an application for the postponement of the deadline by drawing up an air quality plan demonstrating how those limits will be met before the new deadline*

The Air Quality Directive,<sup>1</sup> establishes limit values for certain pollutants in ambient air. As regards nitrogen dioxide, the limit values must not be exceeded after 1 January 2010. However, the directive provides that, if, in a zone or agglomeration in which conditions are particularly difficult, the limit values cannot be met by that date notwithstanding the implementation of appropriate measures, a Member State may postpone the deadline until 1 January 2015 at the latest. That option is subject to the condition that the Member State draws up, in accordance with the requirements laid down by the directive, an air quality plan that demonstrates how the limit values will be met before the new deadline.

In the UK the limit values for nitrogen dioxide were exceeded in 2010 in 40 of the 43 zones set up for the purposes of the directive. In September 2011, the UK submitted plans to the Commission together with applications for the postponement of the deadline for 24 of the 40 zones for which the UK predicted that the limit values would be met by 1 January 2015. For 16 zones or agglomerations (including Greater London), in respect of which the air quality plans projected compliance with the limit values between 2015 and 2025, the UK did not request a time extension.

ClientEarth, an environmental NGO, asked the British courts to require the UK Government to revise the plans to show how the nitrogen dioxide limit values would be respected as soon as possible, and by 1 January 2015 at the latest.

Hearing the case as final court of appeal, the Supreme Court of the United Kingdom has asked the Court of Justice whether, where the limit values were not met by 1 January 2010, a Member State was obliged to apply for a postponement of the deadline. The Supreme Court also asks whether the establishment of an air quality plan is relevant to the question of whether a Member State has complied with the directive, and, if it has not complied, what measures the national court is required to take.

In that regard, the Court notes that, as regards nitrogen dioxide, the directive provides that the limit values 'may not be exceeded', which amounts to an obligation to achieve a certain result. The postponement of the original deadline is possible only where, notwithstanding the implementation of appropriate pollution abatement measures, acute compliance problems exist.

In those circumstances, in order to be able to postpone, by a maximum of five years, the deadline specified by the directive, 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

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<sup>1</sup> 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).

conformity with those values cannot be achieved in a given zone or agglomeration by the specified deadline. The directive does not contain any exception to that obligation.

Next, the Court recalls that, where the limit values for nitrogen dioxide are exceeded after the deadline set and no application for postponement had been submitted, Member States are equally required to establish an air quality plan that sets out appropriate measures so that the period during which the limit values are exceeded can be kept as short as possible. However, the mere fact that such a plan has been established does not mean that the Member State concerned has entirely satisfied its obligations under the directive.

Where a Member State has not complied with the limit values and has not applied for a postponement of the deadline in accordance with the prescribed conditions, it is for the competent national court, 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 to ensure, in particular, that the period during which the limit values are exceeded is as short as possible.

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**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.*

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