

**Case C-375/21**

**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice**

**Date lodged:**

17 June 2021

**Referring court:**

Varhoven administrativen sad (Bulgaria)

**Date of the decision to refer:**

1 June 2021

**Appellants in cassation:**

Sdruzhenie ‘Za Zemiata – dostap do pravosadie’ and Others

‘The Green Tank – grazhdansko sdruzhenie s nestopanska tsel’ – Hellenic Republic

NS

**Respondents in the appeal in cassation:**

Izpalnitelen direktor na Izpalnitelna agentsia po okolna sreda (Executive Director of the Executive Agency for the Environment)

TETS Maritsa-iztok 2 EAD

**Subject matter of the main proceedings**

Cassation proceedings before the Varhoven administrativen sad (Supreme Administrative Court, Bulgaria) in which the Sdruzhenie ‘Za Zemiata – dostap do pravosadie’ (‘For the Earth – Access to Justice’ Association), Sofia, ‘The Green Tank – grazhdansko sdruzhenie s nestopanska tsel’ (‘The Green Tank – non-profit civil association’, Hellenic Republic), and NS, Hellenic Republic, brought appeals in cassation against the judgment of the Administrativen sad Stara Zagora (Administrative Court, Stara Zagora, Bulgaria) of 28 August 2020, by which the first association’s action against the decision of the Executive Director of the Executive Agency for the Environment (‘the IAOS’), Sofia, of 21 December

2018, updating Integrated Permit No 50/2005 issued to the Maritsa-iztok 2 EAD thermal power plant located in the village of Kovachevo, municipality of Radnevo, administrative district of Stara Zagora, was dismissed.

### **Subject matter and legal basis of the request for a preliminary ruling**

Interpretation of EU law; Article 267 TFEU, first sentence, point (b)

### **Questions referred for a preliminary ruling**

1. Is Article 4(3) TEU, read in conjunction with Article 18 of Directive 2010/75/EU and Articles 13 and 23 of Directive 2008/50/EC, to be interpreted as meaning that, when considering a request for a derogation under Article 15(4) of Directive 2010/75/EU, the competent authority must assess whether the granting of the derogation may jeopardise compliance with the environmental quality standards, taking into account all the relevant scientific data on pollution, including the measures under the relevant air quality programme in a given zone or agglomeration pursuant to Article 23 of Directive 2008/50/EC?
2. Is Article 4(3) TEU, read in conjunction with Article 18 of Directive 2010/75/EU and Articles 13 and 23 of Directive 2008/50/EC, to be interpreted as meaning that, when considering a request for a derogation within the meaning of Article 15(4) of Directive 2010/75/EU, the competent authority must refrain from setting less stringent emission limit values for air pollutants from an installation in so far as such a derogation would be contrary to the measures laid down in the relevant air quality programme adopted in the given zone or agglomeration pursuant to Article 23 of Directive 2008/50/EC and could jeopardise achieving the objective of keeping the period of exceedance of the air quality standards as short as possible?
3. Is Article 4(3) TEU, read in conjunction with Article 18 of Directive 2010/75/EU and Article 13 of Directive 2008/50/EC, to be interpreted as meaning that, when considering a request for a derogation under Article 15(4) of Directive 2010/75/EU, the competent authority must assess whether, taking into account all the relevant scientific data on pollution, including the cumulative effect together with other sources of the pollutant concerned, the setting of less stringent emission limit values for air pollutants from an installation would contribute to the exceedance of the relevant emission limit values set in a given zone or agglomeration in accordance with Article 13 of Directive 2008/50/EC, and, if so, whether it must refrain from granting a derogation which would jeopardise the attainment of the environmental quality standards?

**Provisions of European Union law and case-law relied on**

Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control): Articles 3, 15, 18 and 31

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: Articles 13 and 23

Commission Implementing Decision (EU) 2017/1442 of 31 July 2017 establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for large combustion plants;

Case-law of the Court of Justice of the European Union: Case C-730/19 (currently pending), judgment in Case C-488/15 (*European Commission v Republic of Bulgaria*)

**Provisions of national law relied on**

Zakon za chistotata na atmosferania vazduh (ZCHAV, Law on clean ambient air): Article 27

Zakon za opazvane na okolnata sreda (ZOOS, Law on environmental protection): Articles 123 and 123a

Naredba za usloviata i reda za izdavane na kompleksni razreshitelni (Ordinance on the conditions and procedure for issuing integrated permits): Article 2

Naredba za normite za dopustimi emisii na seren dioksid, azotni oksidi i prah, izpuskani v atmosferata ot golemi gorivni instalatsii (GGI) (Ordinance on emission limit values for sulphur dioxide, nitrogen oxides and dust released into the atmosphere by large combustion plants): Article 12

**Succinct presentation of the facts and procedure in the main proceedings**

- 1 The Maritsa-iztok 2 EAD thermal power plant is the largest of the four thermal power plants located in the Maritsa-iztok energy complex in the territory of the Republic of Bulgaria, with a total installed capacity of 1 602 MW. It was built over an area of 512 hectares in the territory of the municipality of Radnevo, on the border with the municipality of Galabovo, approximately 24.5 km as the crow flies from the town of Galabovo, and is composed of eight generating units with built-in desulphurisation systems.
- 2 The combustion plant of the Maritsa-iztok 2 EAD thermal power plant uses local solid fuels extracted from the basin of the mines of Maritsa-iztok EAD. The local lignite of the Maritsa-iztok basin is characterised by its high content of sulphur and ash and its low calorific value. The power plant's boilers are designed and

built to burn local lignite only and therefore cannot burn any other type of fuel. Thus, all the technical units – from the coal feed through processing systems to fuel systems and slag removal, etc. – are designed and then optimised to deal with that specific fuel in particular. The technical limitations of the installations are brought about, in essence, by the inability of the metal structure of the boilers to withstand the linear thermal expansion that would result from the use of a heating fuel with a higher calorific value and a lower sulphur and ash content, that is to say, the use of a different type of coal. The power plant is considered to be one of the main sources of industrial pollution in the territory of the municipality of Galabovo. Exceedances of the hourly and daily average sulphur dioxide limit values are regularly recorded there, above the alert threshold of 500 µg/m<sup>3</sup> established under ‘Ordinance No 12 of 15 July 2010 laying down rules for sulphur dioxide, nitrogen dioxide, particulate matter, lead, benzene, carbon monoxide and ozone in ambient air’. Infringement proceedings against the Republic of Bulgaria for systematic and continuous breaches of the sulphur dioxide standards in the territory of the municipality of Galabovo are currently pending before the Court (Case C-730/19).

- 3 By decision of 21 December 2018, the Executive Director of the IAOS updated Integrated Permit No 50/2005 issued to the Maritsa-iztok 2 EAD thermal power plant for the operation of the following installations and facilities: 1. Combustion installation for electricity production; 2. Hydrogen production installation; 3. Landfill for inert waste, construction waste and hazardous and non-hazardous waste.
- 4 The decision is an individual administrative act and was issued on the basis of Article 124(2)(5) of the ZOOS, read in conjunction with Commission Implementing Decision (EU) 2017/1442 of 31 July 2017 establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for large combustion plants (BAT conclusions for large combustion plants), published on 17 August 2017.
- 5 By decision of 21 December 2018, the Executive Director of the Executive Agency for the Environment granted a derogation, allowing the adoption of emission limit values for SO<sub>2</sub> and Hg in respect of which the parties are in dispute as to whether they are in line with the emission levels established for SO<sub>2</sub> in BAT 21 and for Hg in BAT 23 by Implementing Decision (EU) No 2017/1442 on BAT conclusions for large combustion plants.
- 6 The administrative authority proceeded on the assumption that the emission limit values for sulphur dioxide and mercury could be replaced by equivalent indicators or technical measures which ensure an equivalent standard of environmental protection, for which reason it granted the derogation and established a desulphurisation rate instead of the BAT-associated emission levels, on the basis of Article 123(1)(1)(b) of the ZOOS, read in conjunction with Article 12 of the ‘Ordinance on emission limit values for sulphur dioxide, nitrogen oxides and dust released into the atmosphere by large combustion plants’ and Article 31 of

Directive 2010/75/EU. It referred to two types of mathematical modelling (established using PLUME software) of sulphur dioxide emissions released into the ambient air during the operation of all the approved boilers of the four thermal power plants located in the Maritsa-iztok energy complex. It proceeded on the assumption that the establishment of the desulphurisation rate instead of the BAT-associated emission levels was in compliance with the requirements of Article 123a(3) of the ZOOS, whereby it took into account the documents provided by the operator, namely the decisions as per the minutes of the working group – set up pursuant to the order of the Minister for the Environment and Water of 10 August 2018 – which issued the decision to grant a derogation to the Maritsa-iztok 2 EAD thermal power plant.

- 7 In the present case, it is established that the flue gas treatment technique applied by the operator achieves the emission levels for the hydrogen chloride (HCl) and hydrogen fluoride (HF) indicators pursuant to BAT 21, but cannot achieve the emission level of 320 mg/Nm<sup>3</sup> for SO<sub>x</sub>. The evidence taken before the first instance court, the 'Cost analysis for achieving the emission levels specified in the BAT conclusion', which was carried out by GE Boiler Deutschland GmbH, discusses the technical measures that can be implemented to increase the desulphurisation rate to 98.32%, corresponding to 320 mg/Nm<sup>3</sup>, and the expenditure that would be necessary to implement those measures. The proposed measures to modify the desulphurisation systems are based on the improvement of the mass transfer between the gaseous and liquid phases in the absorber, whereby the proposed technological modifications involve, in general, a modification of the existing injection system, the installation of rings around the walls of the absorbers, and a sulphur analyser. According to the conclusions drawn by GE Boiler Deutschland GmbH, the total investment (capital expenditure) required to achieve the SO<sub>x</sub> levels set in the BAT would be BGN 108 842 000 and the total operating costs over a 12-year operating period would be BGN 203 358 000 (BGN 16 946 500/year), that is to say, the total cost of implementing the technical measures for achieving the emission level of 320 mg/Nm<sup>3</sup> for SO<sub>x</sub> according to BAT 21 would be BGN 312 200 000.
- 8 Increasing the desulphurisation rate of the combustion installation's desulphurisation systems to 97% cannot achieve the SO<sub>x</sub> emission level of 320 mg/Nm<sup>3</sup>, but can reduce emissions. The preliminary estimate of the investment expenditure for the planned measures to increase the desulphurisation rate to 97% is BGN 38 155 000, and then BGN 186 000 per year in operating costs. Over a 12-year operating period, the total costs amount to BGN 40 000 000.
- 9 An analysis of the costs to be incurred by the operator versus the environmental benefits, which was carried out by Amec Foster Wheeler Environment & Infrastructure UK Limited and included in the evidence, shows that the costs and benefits of achieving a desulphurisation rate of at least 97% are comparable and that the coefficient calculated is within the reference value of 0.7.



- 10 In granting the derogation from the emission levels set out in the BAT conclusion for Hg in Implementing Decision (EU) 2017/1442, the administrative authority relied on the analysis carried out by GE Boiler Deutschland GmbH to assess the technical measures that would have to be carried out in order to bring the operator's installation into compliance with the emission limit value for mercury of 7 µg/Nm<sup>3</sup>, but granted a derogation by setting an emission limit value for Hg of 30 µg/Nm<sup>3</sup>.
- 11 The derogation from BAT for sulphur dioxide and mercury granted by the decision of the Executive Director of the IAOS of 21 December 2018, updating Integrated Permit No 50/2005 issued to the Maritsa-iztok 2 thermal power plant, reads as follows: (i) A minimum desulphurisation rate of 97% is set for desulphurisation systems 1/2, 3/4, 7 and 8 and a minimum desulphurisation rate of 97.5% is set for desulphurisation systems 5/6. (ii) An emission limit value of 30 µg/Nm<sup>3</sup> is set for mercury. The operator undertakes to carry out its own ongoing studies on waste gas pollutant emissions. The correlation factor between the additional environmental benefits obtained and the costs of achieving them is significantly below the recommended value of 0.7 adopted in the information and eligibility guidelines for granting derogations under Article 123a(3) of the ZOOS and, respectively, Article 15(4) of Directive 2010/75/EU. The costs associated with achieving the emission levels pursuant to BAT 21 and 23 of Implementing Decision 2017/1442 are disproportionate to the expected environmental benefits.
- 12 At first instance, by judgment of 28 August 2020, the Administrativen sad – Stara Zagora (Administrative Court, Stara Zagora, Bulgaria) dismissed the action brought by the 'Za zemjata – dostap do pravosadie' association against the decision of 21 December 2018 of the Executive Director of the IAOS, by which Integrated Permit No 50/2005 granted to the Maritsa-iztok 2 thermal power plant was updated.
- 13 In its reasoning, which is relevant to the request for a preliminary ruling made, the first instance court emphasises that, in accordance with Article 12(1) of the 'Ordinance on emission limit values for sulphur dioxide, nitrogen oxides and dust released into the atmosphere by large combustion plants', in cases where combustion plants burn a local solid fuel which, because of its characteristics, does not allow for compliance with the emission limit values for sulphur dioxide laid down in Article 5, the minimum desulphurisation rates laid down in Part 5 of Annex No 1 may be applied in accordance with the rules defined in Part 6 of Annex No 1. Article 12(2) of the Ordinance provides that the exception referred to in paragraph 1 may be granted on the basis of a technical justification for the impossibility of complying with the emission limit values set out in Article 5, submitted by the operator prior to the issuance/review of the integrated permit and approved by the Minister for the Environment and Water or by an official authorised by him or her.
- 14 The Administrative Court refused to consider and assess the significance of the 'Update of the air quality programme in the municipality of Galabovo, developed

for the pollutants particulate matter (PM<sub>10</sub>) and sulphur dioxide (SO<sub>2</sub>) for 2019 – 2023'. It stated that that document is irrelevant to the subject matter of the dispute. It summarised that the detailed procedure for issuing and updating integrated permits which is contained in the 'Ordinance on the conditions and procedure for issuing integrated permits' does not require the development of such a programme as a precondition for updating any integrated permit, and *a fortiori* does not require the administrative authority, in the person of the Executive Director of the IAOS, to adapt its legal acts to the content of such a programme.

- 15 The first instance court takes the view that the emission limit values pursuant to Article 123(1)(1)(b) of the ZOOS could be implemented or replaced by equivalent indicators or technical measures ensuring an equivalent standard of environmental protection. In that respect, it referred to Article 15(4) of Directive 2010/75/EU, the provisions of which were transposed in Article 123a(3) and Article 123a(4) of the ZOOS.
- 16 In the view of the first instance court, Article 12 of the Ordinance on large combustion plants and Article 31 of Directive 2010/75/EU are applicable in the present case.
- 17 With regard to the derogation granted in respect of the emission limit value for mercury pursuant to BAT 23 of Implementing Decision (EU) 2017/1442, the Administrative Court, Stara Zagora took the view, when comparing the benefits with the costs, that the coefficient determined allowed the administrative authority to assume that there were grounds for granting a derogation and to set emission limit values at 30 µ/m<sup>3</sup> instead of 7 µ/m<sup>3</sup>.

#### **The essential arguments of the parties in the main proceedings**

- 18 The appellants in cassation, 'The Green Tank – grazhdansko sdruzhenie s nestopanska tsel' and NS, both from the Hellenic Republic, consider that the request for a preliminary ruling is well founded. In that regard, they state that it is relevant in the context of the cross-border validity of the contested integrated permit.
- 19 The first respondent in the appeal in cassation, the Executive Director of the IAOS, considers that the request for a preliminary ruling is inadmissible and states that it is aimed at the collection of evidence that would be relevant to the resolution of the dispute. He submits that it seeks proof in respect of legal rules which are not subject to proof. In the alternative, he also takes a position on the assertion that the request for a preliminary ruling is unfounded. He takes the view that the provisions whose interpretation is sought have been transposed into Bulgarian law and have so far been successfully applied without the national judges having encountered any objective difficulties.
- 20 The second respondent in the appeal in cassation, the Maritsa-iztok 2 EAD thermal power plant, considers that the request for a preliminary ruling is

unfounded. It submits that the meaning and spirit of the provisions whose interpretation is sought are clear and leave no scope for doubt. It considers that the significance of the programme of the municipality of Galabovo, which cannot alter the conditions for the integrated permits granted to operators of large combustion plants, has been misinterpreted for the purposes of the request for a preliminary ruling.

### **Succinct presentation of the reasoning in the request for a preliminary ruling**

- 21 The individual administrative act challenged before the Administrative Court, Stara Zagora – the decision of 21 December 2018 of the Executive Director of the IAOS – was issued on the basis of Article 124(2)(5) of the ZOOS, read in conjunction with Commission Implementing Decision (EU) 2017/1442. Article 21(3) of Directive 2010/75/EU requires that, within four years of publication of that decision, that is to say, by 17 August 2021, all the permit conditions for the large combustion plant are reconsidered and, if necessary, updated to ensure compliance with the BAT conclusions for large combustion plants.

In implementation of the above, the ‘Ordinance on the conditions and procedure for issuing integrated permits’ (‘the IP Ordinance’) requires operators to communicate information under Annex No 6 and/or evidence of the implementation of BAT to the IAOS within nine months of publication of the decision on BAT conclusions for large combustion plants in the Official Journal of the European Union (Article 18a of the IP Ordinance, former Article 16 of the IP Ordinance).

- 22 According to Article 123a(1) of the ZOOS, the emission standards laid down in the integrated permit are not to exceed the emission levels corresponding to the best available techniques as defined in the BAT conclusions for large combustion plants (BAT-associated emission levels). It is possible to derogate from that rule, subject to the conditions provided for in Article 123a(3) of the ZOOS or, respectively, Article 15(4) of Directive 2010/75/EU, where the assessment shows that the achievement of the BAT-associated emission levels as described in BAT conclusions adopted by decision of the European Commission would lead to disproportionately high costs compared to the environmental benefits due to: 1. the geographical location of the installation; or 2. the environmental characteristics of the area where the site is located; or 3. the technical characteristics of the installation.
- 23 In application of Article 27 of the ZCHAV and Article 23 of Directive 2008/50/EC, in the territory of the municipality of Galabovo, a programme for reducing the levels of pollutants and achieving the sulphur dioxide limit values set for the period 2019-2023, entitled ‘Update of the air quality programme in the municipality of Galabovo developed for the pollutants particulate matter (PM<sub>10</sub>) and sulphur dioxide (SO<sub>2</sub>)’, was adopted by decision of the Galabovo Municipal



Council of 30 November 2018 ('the Programme'). The Programme listed the four thermal power plants in the region, including the Maritsa-iztok 2 EAD thermal power plant, and residential heating as the main sources of sulphur dioxide pollution.

- 24 The Programme provided for a long-term measure to reduce sulphur dioxide pollution: 'Implementation of projects for converting desulphurisation systems and achieving a minimum desulphurisation rate of 98%, and prohibiting the operation of boiler units without operational desulphurisation systems'.
- 25 It is clear from the facts of the case that, in a decision of 21 December 2018, the Executive Director of the IAOS set a desulphurisation rate different from that set in the Programme of the municipality of Galabovo. The individual administrative act challenged before the first instance court provides for a minimum desulphurisation rate of 97% for desulphurisation systems 1/2, 3/4, 7 and 8, and a minimum desulphurisation rate of 97.5% for desulphurisation systems 5/6, which is contrary to the measure provided for in the Programme of the municipality of Galabovo, which provides for a minimum desulphurisation rate of 98%. The first instance court declined to take a position on the abovementioned divergences, stating that the updating of the integrated permit in the administrative procedure provided for under the IP Ordinance does not require the development or adaptation of such a programme as a precondition for the adoption of the contested legal act.
- 26 The Programme of the municipality of Galabovo shows that residential heating accounts for between 10.1% and 79% of the hourly average concentration of sulphur dioxide in the various settlements of the municipality. The assessment of whether the conditions set out in the decision of the Executive Director of the IAOS will lead to compliance or non-compliance with the air quality standards is based on mathematical modelling of pollution carried out by the operator using the PLUME model, in which the air concentrations of the expected emissions from the Maritsa-iztok 2 EAD thermal power plant are compared with the air quality standards, without assessing the impact of other industrial sources in the area and the heating of residential premises.
- 27 Directive 2010/75/EU establishes as a rule that, in principle, the emission limit values in the integrated permit are not to exceed the BAT-associated emission levels for sulphur dioxide of up to 160 mg/Nm<sup>3</sup> for plants with a capacity exceeding 300 MW, whereby, for plants burning local lignite, the limit is up to 320 mg/Nm<sup>3</sup> (BAT 21, point 2.1.4, Table 4 of the BAT conclusions for large combustion plants) and, for mercury, the limit is 1-7 µg/Nm<sup>3</sup> (BAT 23). The derogation for sulphur dioxide granted by the integrated permit is a desulphurisation rate of 97%, which equates to 570 mg/Nm<sup>3</sup>, and the derogation granted for mercury by the administrative authority is up to 30 µg/m<sup>3</sup>.
- 28 The possibility of derogation is provided for in Article 15(4) of Directive 2010/75/EU (transposed in Article 123a(4) of the ZOOS), and Article 18 of

Directive 2010/75/EU establishes the rule that the emission limit values set in the integrated permit for large combustion plants are not to lead to a breach of environmental quality standards. Bulgarian law uses the term ‘environmental quality standard’ (Paragraph 1, point 8, of the Dopolnitelnye razporedbi na ZOOS, Additional provisions for the ZOOS). Where the application of BAT cannot lead to compliance with those standards, additional measures should be provided for in the integrated permit. However, the ambient air quality standards under Directive 2008/50/EC, including the hourly and daily average limit values for sulphur dioxide, are precisely such a standard (see Opinion of Advocate General J. Kokott in Joined Cases C-165/09, C-166/09 and C-167/09, point 62). It can be concluded from this that a derogation under Article 15(4) of Directive 2010/75/EU can be granted on the condition that it does not impair the effect of Article 18 of Directive 2010/75/EU, that is to say, only if it does not lead to a breach of environmental quality standards.

- 29 The daily and hourly average limit values for sulphur dioxide are systematically exceeded in the territory of the municipality of Galabovo, a circumstance which has been established and is the subject of Case C-730/19 currently pending before the Court of Justice of the European Union. The second subparagraph of Article 23(1) of Directive 2008/50/EC provides that, in the event of exceedances of air quality standards for which the attainment deadline is already expired, the air quality plans must set out appropriate measures, so that the exceedance period can be kept as short as possible. The deadline for attaining the sulphur dioxide limit values expired long before the integrated permit challenged at first instance was granted, with the result that the provision in question is applicable to the present dispute (Annex XI to Directive 2008/50/EC). The Court has already interpreted the second subparagraph of Article 23(1) of Directive 2008/50/EC, stating, in paragraph 109 of the judgment [of 5 April 2017, *European Commission v Republic of Bulgaria* (C-488/15, EU:C:2017:267)], 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.
- 30 The air quality programme of the municipality of Galabovo was prepared in implementation of Article 23 of Directive 2008/50/EC and contains specific measures for thermal power plants in the area, including the Maritsa-iztok 2 EAD thermal power plant. It was disregarded by the administrative authority and the first instance court, which assumed conditions for the derogation relating to the sulphur dioxide indicator that are different from those provided for therein. There is a conflict of standards of secondary EU law in so far as Article 15(4) of Directive 2010/75/EU, read in conjunction with Article 18 thereof, is applied without taking into account Article 13 and Article 23(1), second subparagraph, of Directive 2008/50/EC. The question arises as to whether, when considering a request for a derogation from the BAT conclusions, the competent authority is required to take into account the relevant scientific data on pollution in the area, a large part of which is contained in the analytical part of the air quality programme for a given zone or agglomeration drawn up on the basis of Article 23 of Directive

2008/50/EC, including the measures for complying with the air quality standards set out in the programme, and whether it is also required to assess whether the granting of a derogation on the basis of Article 15(4) of Directive 2010/75/EU may jeopardise compliance with the air quality standards.

- 31 On the one hand, Articles 15(4) and 18 of Directive 2010/75/EU allow for a derogation from the BAT-associated emission levels under certain conditions, but they also refer to Article 13 of Directive 2008/50/EC, in accordance with which air quality standards, such as the hourly and daily average sulphur dioxide limit value, must not be exceeded. In addition, in the event of exceedances of air quality standards for which the attainment deadline is already expired, Article 23(1) of Directive 2008/50/EC requires air quality plans to provide for measures so that the air quality standards are attained as soon as possible. The conclusions drawn in those respects will determine the answer to the question as to whether the Executive Director of the IAOS was legally permitted to grant a derogation from the BAT-associated emission levels in the present case where doing so would jeopardise the attainment of the sulphur dioxide limit standards in the territory of the municipality of Galabovo as soon as possible and/or would be contrary to the measures provided for in the Programme of the municipality of Galabovo.
- 32 In accordance with Article 18 of Directive 2010/75/EU, when issuing and updating integrated permits, the competent authority is to assess whether the emission levels set out in the permit lead to a breach of air quality standards. Since air quality standards apply to concentrations of a pollutant in a given area, it can be concluded that it is necessary to carry out an impact assessment of emissions from all sources contributing to the formation of concentrations of the pollutant in question. In the present case, the administrative authority based its assessment on modelling carried out by the operator using the PLUME model. With regard to the practical application of the law in this case, the question arises as to whether the impact of the four thermal power plants in the area on air quality standards as well as the impact of residential heating were examined as starting points in the impact assessment under the Programme of the municipality of Galabovo.
- 33 There is a conflict of standards of secondary EU law in so far as the Administrative Court applied Article 15(4) of Directive 2010/75/EU, read in conjunction with Article 18 thereof, without taking into account Article 13 and Article 23(1), second subparagraph, of Directive 2008/50/EC. The context of the provisions cited raises the question as to whether the competent authority, when considering a request for a derogation from the BAT-associated emission levels, is required to carry out an assessment of the impact of all sources contributing to the concentrations of a given pollutant in an area, and, in so far as the emissions of the Maritsa-iztok 2 EAD thermal power plant contribute to the breach of air quality standards, the question arises as to whether the administrative authority was legally permitted to grant the derogation from the BAT-associated emission levels.

- 34 The reasons presented imply different interpretations and have a crucial bearing on the correct resolution of the dispute. The answers to the questions referred do not follow clearly and unambiguously from a previous judgment of the Court of Justice of the European Union, and the meaning and scope of the provisions to be interpreted are not so clear as to leave no scope for doubt.

WORKING DOCUMENT