JUDGMENT OF THE COURT (First Chamber)

26 May 2011 *

In Joined Cases C-165/09 to C-167/09,

REFERENCES for a preliminary ruling under Article 234 EC from the Raad van State (Netherlands), made by decisions of 29 April 2009, received at the Court on 30 April 2009, in the proceedings

Stichting Natuur en Milieu (C-165/09),

Stichting Greenpeace Nederland,

Mr and Mrs B. Meijer,

E. Zwaag,

F. Pals

v

College van Gedeputeerde Staten van Groningen,

* Language of the case: Dutch.

and

Stichting Natuur en Milieu (C-166/09),

Stichting Zuid-Hollandse Milieufederatie,

Stichting Greenpeace Nederland,

Vereniging van Verontruste Burgers van Voorne

v

College van Gedeputeerde Staten van Zuid-Holland,

and

Stichting Natuur en Milieu (C-167/09),

Stichting Zuid-Hollandse Milieufederatie,

Stichting Greenpeace Nederland,

Vereniging van Verontruste Burgers van Voorne

v

College van Gedeputeerde Staten van Zuid-Holland,

third parties:

RWE Eemshaven Holding BV, formerly RWE Power AG (C-165/09),

Electrabel Nederland NV (C-166/09),

College van Burgemeester en Wethouders Rotterdam (C-166/09 and C-167/09),

E.On Benelux NV (C-167/09),

THE COURT (First Chamber),

composed of A. Tizzano (Rapporteur), President of the Chamber, J.-J. Kasel, E. Levits, M. Safjan, and M. Berger, Judges,

Advocate General: J. Kokott,
Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 14 October 2010,

after considering the observations submitted on behalf of:

— Stichting Natuur en Milieu, by J.G. Vollenbroek, acting as Agent,

— Stichting Greenpeace Nederland, by J.G. Vollenbroek, acting as Agent, and B.N. Kloostra, advocaat,

— Stichting Zuid-Hollandse Milieufederatie, by J.G. Vollenbroek, acting as Agent,

— the College van Gedeputeerde Staten van Groningen, by A. Ayal and W.J.W. Snippe, acting as Agents,

— the College van Gedeputeerde Staten van Zuid-Holland, by B.J.M. Verras, acting as Agent,

— RWE Eemshaven Holding BV, formerly RWE Power AG, by D.N. Broerse and J.J. Peelen, advocaten, and M. Werner, Rechtsanwalt,

— E.On Benelux NV, by J.M. Osse, J.C.A. Houdijk and A.A. Freriks, advocaten, and E. Broeren, Rechtsanwalt,

— Electrabel Nederland NV, by P. Wytinck, M. van der Woude and M.M. Kaajan, advocaten,

— the Netherlands Government, by C.M. Wissels, B. Koopman, A.M. de Ree, and Y. de Vries, acting as Agents,

— the Danish Government, by V. Pasternak Jørgensen, R. Holdgaard and C. Vang, acting as Agents,

— the French Government, by S. Menez, acting as Agent,

— the Italian Government, by G. Palmieri, acting as Agent, and S. Fiorentino, avvocato dello Stato,

— the Austrian Government, by E. Riedl, acting as Agent,

— the European Commission, by A. Alcover San Pedro and F. Ronkes Agerbeek, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 December 2010,

gives the following

Judgment

1 These references for a preliminary ruling concern the interpretation of Article 9 of Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ 1996 L 257, p. 26), in its original version and as codified by 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; 'the IPPC Directive'), and of the provisions that are relevant, in light of the circumstances of the disputes in the main proceedings, of 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; 'the NEC Directive').

2 The references have been made in proceedings brought, as regards Case C-165/09, by the foundations Stichting Natuur en Milieu ('Natuur en Milieu') and Stichting Greenpeace Nederland ('Greenpeace') and by four natural persons against the College van Gedeputeerde Staten van Groningen (Provincial Executive of the Province of Groningen) concerning a decision by which the latter granted the company RWE Eemshaven Holding BV, formerly RWE Power AG ('RWE'), a permit for the construction and operation of a power station in the province of Groningen and, as regards Cases C-166/09 and C-167/09, by the foundations Natuur en Milieu, Stichting Zuid-Hollandse Milieufederatie ('Milieufederatie') and Greenpeace and the association Vereniging van Verontruste Burgers van Voorne (Association of Concerned Citizens of

Voorne; 'the VVBV') against the College van Gedeputeerde Staten van Zuid-Holland (Provincial Executive of the Province of South Holland) concerning the decisions by which that authority granted the companies Electrabel Nederland N.V. ('Electrabel') and E.On Benelux N.V. ('E.On') respectively permits for the construction and operation of two power stations in the province of South Holland.

Legal context

European Union legislation

The IPPC Directive

3 As the IPPC Directive has codified and replaced Directive 96/61, the provisions of the latter will be set out below in their consolidated version, which does not result in their substantive alteration.

4 Recitals 3 and 9 in the preamble to the IPPC Directive state:

'(3) The Fifth Environmental Action Programme … accorded priority to integrated pollution control as an important part of the move towards a more sustainable balance between human activity and socioeconomic development, on the one hand, and the resources and regenerative capacity of nature, on the other.

(9) The objective of an integrated approach to pollution control is to prevent emissions into air, water or soil wherever this is practicable, taking into account waste management, and, where it is not, to minimise them in order to achieve a high level of protection for the environment as a whole.'

5 Article 2(7) of the IPPC Directive defines 'environmental quality standard' as 'the set of requirements which must be fulfilled at a given time by a given environment or particular part thereof, as set out in Community legislation.'

6 As stated in Article 2(12), '"best available techniques" means the most effective and advanced stage in the development of activities and their methods of operation which indicate the practical suitability of particular techniques for providing in principle the basis for emission limit values designed to prevent and, where that is not practicable, generally to reduce emissions and the impact on the environment as a whole.'

7 Article 4 of the IPPC Directive provides:

'Member States shall take the necessary measures to ensure that no new installation is operated without a permit issued in accordance with this Directive …'

8 Article 9 of the IPPC Directive provides:

'1. Member States shall ensure that the permit includes all measures necessary for compliance with the requirements of Articles 3 and 10 for the granting of permits in order to achieve a high level of protection for the environment as a whole by means of protection of the air, water and land.

…

3. The permit shall include emission limit values for polluting substances, in particular those listed in Annex III, likely to be emitted from the installation concerned in significant quantities, having regard to their nature and their potential to transfer pollution from one medium to another (water, air and land). If necessary, the permit shall include appropriate requirements ensuring protection of the soil and ground water and measures concerning the management of waste generated by the installation. Where appropriate, limit values may be supplemented or replaced by equivalent parameters or technical measures.

…

4. Without prejudice to Article 10, the emission limit values and the equivalent parameters and technical measures referred to in paragraph 3 shall be based on the best available techniques, without prescribing the use of any technique or specific technology, but taking into account the technical characteristics of the installation concerned, its geographical location and the local environmental conditions. In all circumstances, the conditions of the permit shall contain provisions on the minimisation of long-distance or transboundary pollution and ensure a high level of protection for the environment as a whole.

…

7. The permit may contain such other specific conditions for the purposes of this Directive as the Member State or competent authority may think fit.

8. Without prejudice to the obligation to implement a permit procedure pursuant to this Directive, Member States may prescribe certain requirements for certain categories of installations in general binding rules instead of including them in individual permit conditions, provided that an integrated approach and an equivalent high level of environmental protection as a whole are ensured.'

9 Article 10 of the IPPC Directive is worded as follows:

'Where an environmental quality standard requires stricter conditions than those achievable by the use of the best available techniques, additional measures shall in particular be required in the permit, without prejudice to other measures which might be taken to comply with environmental quality standards.'

10 Article 19(2) of the IPPC Directive provides:

'In the absence of Community emission limit values defined pursuant to this Directive, the relevant emission limit values contained in the Directives listed in Annex II and in other Community legislation shall be applied as minimum emission limit values pursuant to this Directive for the installations listed in Annex I.'

11 Annex II to the IPPC Directive lists the following directives:

'1. Council Directive 87/217/EEC of 19 March 1987 on the prevention and reduction of environmental pollution by asbestos.

2. Council Directive 82/176/EEC of 22 March 1982 on limit values and quality objectives for mercury discharges by the chlor-alkali electrolysis industry.

3. Council Directive 83/513/EEC of 26 September 1983 on limit values and quality objectives for cadmium discharges.

4. Council Directive 84/156/EEC of 8 March 1984 on limit values and quality objectives for mercury discharges by sectors other than the chlor-alkali electrolysis industry.

5. Council Directive 84/491/EEC of 9 October 1984 on limit values and quality objectives for discharges of hexachlorocyclohexane.

6. Council Directive 86/280/EEC of 12 June 1986 on limit values and quality objectives for discharges of certain dangerous substances included in List I of the Annex to Directive 76/464/EEC.

7. Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste.

8. Council Directive 92/112/EEC of 15 December 1992 on procedures for harmonising the programmes for the reduction and eventual elimination of pollution caused by waste from the titanium dioxide industry.

9. Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants.

10. Directive 2006/11/EC of the European Parliament and of the Council of 15 February 2006 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community.

11. Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste.

12. Council Directive 75/439/EEC of 16 June 1975 on the disposal of waste oils.

13. Council Directive 91/689/EEC of 12 December 1991 on hazardous waste.

14. Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste.'

The NEC Directive

12 Recitals 11 and 12 in the preamble to the NEC Directive state:

'(11) A set of national ceilings for each Member State for emissions of sulphur dioxide, nitrogen oxides, volatile organic compounds and ammonia is a cost-effective way of meeting interim environmental objectives. Such emission ceilings will allow the Community and the Member States flexibility in determining how to comply with them.

(12) Member States should be responsible for implementing measures to comply with national emission ceilings. It will be necessary to evaluate progress towards compliance with the emission ceilings. National programmes for the reduction of emissions should therefore be drawn up and reported on to the Commission and should include information on the measures adopted or envisaged to comply with the emission ceilings.'

13 Recital 19 in the preamble to the NEC Directive states as follows:

'The provisions of this Directive should apply without prejudice to the Community legislation regulating emissions of those pollutants from specific sources and to the provisions of [Directive 96/61] in relation to emission limit values and use of best available techniques.'

14 The aim of the NEC Directive, according to Article 1, is to limit emissions of acidifying and eutrophying pollutants and ozone precursors in order to improve the protection of the environment and human health against risks of adverse effects from acidification, soil eutrophication and ground-level ozone.

15 Article 4 of the NEC Directive, which is headed 'National emission ceilings', provides:

'1. By the year 2010 at the latest, Member States shall limit their annual national emissions of the pollutants sulphur dioxide (SO_2), nitrogen oxides (NO_x), volatile organic compounds (VOC) and ammonia (NH_3) to amounts not greater than the emission ceilings laid down in Annex I, taking into account any modifications made by Community measures adopted following the reports referred to in Article 9.

2. Member States shall ensure that the emission ceilings laid down in Annex I are not exceeded in any year after 2010.'

16 Article 6 of the NEC Directive states:

'1. Member States shall, by 1 October 2002 at the latest, draw up programmes for the progressive reduction of national emissions of the pollutants referred to in Article 4 with the aim of complying at least with the national emission ceilings laid down in Annex I by 2010 at the latest.

2. The national programmes shall include information on adopted and envisaged policies and measures and quantified estimates of the effect of these policies and measures on emissions of the pollutants in 2010. Anticipated significant changes in the geographical distribution of national emissions shall be indicated.

3. Member States shall update and revise the national programmes as necessary by 1 October 2006.

4. Member States shall make available to the public and to appropriate organisations such as environmental organisations the programmes drawn up in accordance with paragraphs 1, 2 and 3. Information made available to the public and to organisations under this paragraph shall be clear, comprehensible and easily accessible.'

17 Article 7(1) and (2) of the NEC Directive is worded as follows:

'1. Member States shall prepare and annually update national emission inventories and emission projections for 2010 for the pollutants referred to in Article 4.

2. Member States shall establish their emission inventories and projections using the methodologies specified in Annex III.'

18 Article 8(1) and (2) of the NEC Directive provides:

'1. Member States shall each year, by 31 December at the latest, report their national emission inventories and their emission projections for 2010 established in accordance with Article 7 to the Commission and the European Environment Agency. They shall report their final emission inventories for the previous year but one and their provisional emission inventories for the previous year. Emission projections shall include information to enable a quantitative understanding of the key socioeconomic assumptions used in their preparation.

2. Member States shall, by 31 December 2002 at the latest, inform the Commission of the programmes drawn up in accordance with Article 6(1) and (2).

Member States shall, by 31 December 2006 at the latest, inform the Commission of the updated programmes drawn up in accordance with Article 6(3).'

19 Annex I to the NEC Directive lays down for the Kingdom of the Netherlands an emission ceiling of 50 kilotonnes of SO_2 and 260 kilotonnes of NO_x to be attained by 2010 at the latest.

National legislation

20 Directive 96/61 and the IPPC Directive have been transposed into domestic law by amending certain provisions of the Law on Environmental Management (Wet Milieubeheer; 'the WMB'). Under Article 8.1(1)(b) of the WMB, it is prohibited, without a permit granted for that purpose, to modify an installation covered by Directive 96/61, and subsequently by the IPPC Directive, or to convert its operation.

21 In particular, Article 8.10 of the WMB provides that a permit for the construction and operation of such an installation may be refused only in the interests of environmental protection. Article 8.10(2)(a) specifies in this regard that a permit is to be refused in any event if it cannot be ensured by its grant that the best available techniques will be applied in the installation in question.

22 As provided by Article 8.11(2) of the WMB, a permit may be granted subject to restrictions where the interests of environmental protection so require.

23 The Netherlands authorities have taken a number of steps and adopted several measures in order to implement and transpose the NEC Directive.

24 In accordance with Article 8(2) of that directive, in December 2002 the State Secretary for Housing, Spatial Planning and the Environment (Staatssecretaris van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer) drew up and notified to the Commission the report on the national programme relating to emission ceilings concerning acidification and large-scale air pollution ('Rapportage emissieplafonds verzuring

en grootschalige luchtverontreiniging 2002'). In 2003, he drew up the implementing memorandum relating to the emission ceilings concerning acidification and large-scale air pollution ('Uitvoeringsnotitie emissieplafonds verzuring en grootschalige luchtverontreiniging 2003 Erop of eronder'), which sets out the measures envisaged and divides up the national emission ceilings on a sectoral basis.

25 On 6 July 2005 the Law of 16 June 2005 amending the Law on Air Pollution (implementation of the EC directive on national emission ceilings) (Wet van 16 juni 2005 tot wijziging van de Wet inzake de luchtverontreiniging (uitvoering EG-richtlijn nationale emissieplafonds)) and the Decree to implement the EC directive on national emission ceilings (Besluit uitvoering EG-richtlijn nationale emissieplafonds) entered into force.

26 In accordance with Article 8(2) of the NEC Directive, the national environmental-policy programme was revised and updated in 2006. For that purpose, the Minister for Housing, Spatial Planning and the Environment (Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer; 'the Minister') adopted a report on the emission ceilings concerning acidification and large-scale air pollution ('Uitvoeringsnotitie emissieplafonds verzuring en grootschalige luchtverontreiniging 2006'), which included a set of legal requirements, tax measures and binding agreements that was envisaged in order to comply by 31 December 2010 at the latest with the emission ceilings laid down for the Kingdom of the Netherlands.

27 On 28 June 2007 the Minister, acting upon the implementing memorandum relating to the emission ceilings concerning acidification and large-scale air pollution that had been drawn up by the State Secretary for Housing, Spatial Planning and the Environment, set the sectoral SO_2 emission ceiling for the energy sector at a total of 13.5 kilotonnes per year, without taking account of the bringing into operation of new power stations. A binding and enforceable memorandum of understanding on

SO_2 was concluded on 26 June 2008 between the national authorities concerned, the provincial authorities (including those of South Holland and Groningen) and all the electricity companies, so that it would be obligatory for all the signatories to comply with this emission limit in the energy sector over a period extending until 31 December 2019.

28 In the context of the national emission ceiling for NO_x, on the other hand, the Netherlands authorities set up an emissions trading scheme, on the basis of a target of 55 kilotonnes of NO_x emissions in 2010 for their large industrial installations.

The main actions and the questions referred for a preliminary ruling

29 In Case C-165/09, by decision of 11 December 2007 the College van Gedeputeerde Staten van Groningen granted RWE a permit for the construction and operation of a power station fuelled by pulverised coal and biomass at Eemshaven, an industrial site in Eemsmond.

30 The total annual emissions from this installation, from its entry into operation envisaged in 2012 at the earliest, should amount to 1 454 tonnes of SO_2, which constitute roughly 2.9 % of the national emission ceiling for this pollutant.

31 Natuur en Milieu, Greenpeace, Mr and Mrs Meijer, Mr Zwaag and Mr Pals brought an action challenging that decision before the Raad van State (Council of State).

32 In Case C-166/09, the College van Gedeputeerde Staten van Zuid-Holland granted a permit on 11 March 2008 for Electrabel's proposed construction and operation of a power station fuelled by pulverised coal and biomass on Missouriweg, Rotterdam.

33 This power station, which will not be brought into operation before 2013, should generate annual emissions amounting to 580 tonnes of SO_2 and 730 tonnes of NO_x, that is to say, 1.2 % and 0.3 % respectively of the national emission ceilings laid down for SO_2 and NO_x.

34 Natuur en Milieu, Milieufederatie, Greenpeace and the VVBV challenged the decision granting this permit before the Raad van State.

35 In Case C-167/09, by decision of 26 October 2007 the College van Gedeputeerde Staten van Zuid-Holland granted E.On a partial revision permit authorising a new installation, on Coloradoweg in the industrial area of Rotterdam, for the production of electricity by burning mainly coal.

36 The total annual emissions envisaged once the installation has been brought into operation, in 2012 at the earliest, should amount to 923 tonnes of SO_2 and 1 535 tonnes of NO_x, which respectively amount to 1.8 % and 0.6 % of the national emission ceilings for SO_2 and NO_x.

37 Natuur en Milieu, Milieufederatie, Greenpeace and the VVBV brought an action challenging that decision granting a permit before the Raad van State.

38 In those three actions, the applicants submitted in essence that, given the fact that the emission ceilings laid down for the Kingdom of the Netherlands by the NEC Directive would not be complied with at the end of 2010, the competent authorities should not have granted the permits or should, at least, have granted them subject to stricter conditions.

39 In its orders for reference, the Raad van State endorsed the proposition that, when the permits were granted, the policy and measures adopted were not sufficient to enable the Kingdom of the Netherlands to achieve by the end of 2010 the objective referred to in Article 4 of the NEC Directive.

40 Indeed, as was apparent in particular from the report drawn up by the Minister on the emission ceilings concerning acidification and large-scale air pollution, from the report drawn up by AEA Energy & Environment in 2008 on the evaluation of national plans submitted under the NEC Directive and from 'Environmental Balance 2008' ('Milieubalans 2008') adopted by the Planbureau voor de Leefomgeving (Netherlands Environmental Assessment Agency), the national emission ceilings for SO_2 and NO_x would, according to the estimates, probably be exceeded in the Netherlands in 2010 without a change in policy.

41 Thus, in each of the main actions, the Raad van State was prompted to ponder over certain aspects of European Union law, in identical terms subject to the following provisos:

— in Case C-165/09, only the emission ceiling for SO_2 laid down by the NEC Directive is at issue, whereas Cases C-166/09 and C-167/09 also relate to the emission ceiling for NO_x that is referred to by that directive;

— given the time at which the facts in the main proceedings occurred, the first question referred for a preliminary ruling in Cases C-165/09 and C-167/09 relates to the interpretation of Article 9 of Directive 96/61, whilst in Case C-166/09 the first question refers to the same provision, the wording of which is unchanged, as codified by the IPPC Directive.

42 In those circumstances, the Raad van State decided to stay the proceedings and, in each of the three cases before it, to refer the following questions to the Court for a preliminary ruling:

'1. Does the obligation of interpretation in conformity with directives imply that the obligations under Directive [96/61] (now [the IPPC Directive]) [(Cases C-165/09 and C-167/09)] [or] [the IPPC Directive] [(Case C-166/09)], as transposed in the [WMB], can and must be interpreted as meaning that, in deciding on an application for an environmental permit, the national emission ceiling for SO_2 [(Case C-165/09)] [or] the national emission ceilings for SO_2 and NO_x [(Cases C-166/09 and C-167/09)] in [the NEC Directive] must be fully taken into account, in particular as regards the obligations under Article 9(4) of [the IPPC Directive]?

2. (a) Does the duty of a Member State to refrain from taking measures liable seriously to compromise the attainment of the result prescribed by a directive also apply during the period of 27 November 2002 to 31 December 2010 envisaged in Article 4(1) of the NEC Directive?

(b) Do positive obligations rest with the Member State concerned during the relevant period of 27 November 2002 to 31 December 2010, either in parallel with the aforementioned duty to refrain or in place thereof, if the national emission ceiling for SO_2 and/or NO_x in the NEC Directive is exceeded, or if there is a risk that it may be exceeded, at the end of that period?

(c) In answering Questions 2(a) and 2(b), is it significant that an application for an environmental permit for an installation which contributes to the national emission ceiling for SO_2 and/or NO_x in the NEC Directive being exceeded or the risk of its being exceeded indicates that the installation will become operational in the year 2011 at the earliest?

3. (a) Do the obligations referred to in Question 2 mean that, in the absence of guarantees that the installation for which an environmental permit has been sought will not contribute to the national emission ceiling for SO_2 and/or NO_x in the NEC Directive being exceeded or the risk of its being exceeded, the Member State must refuse the application for the environmental permit or attach further conditions or restrictions to it? In answering that question, is the extent to which the installation contributes to the emission ceiling being exceeded or the risk of its being exceeded of significance?

(b) Or does it follow from the NEC Directive that, even where the national emission ceiling for SO_2 and/or NO_x is exceeded or risks being exceeded, a Member State has the discretion to bring about the result prescribed by the directive not by refusing the permit or by making it subject to further conditions or restrictions, but rather by adopting other measures such as other forms of compensation?

4. Where obligations as referred to in Questions 2 and 3 rest with a Member State, can an individual bring the issue of compliance with those obligations before a national court?

5. (a) Can an individual rely directly on Article 4 of the NEC Directive?

(b) If so, is it possible to do so from 27 November 2002 or only from 31 December 2010? Is it significant, when answering that question, that the application for an environmental permit indicates that the installation will become operational in the year 2011 at the earliest?

6. More particularly, if the grant of an environmental permit and/or other measures contribute to the national emission ceiling for SO_2 and/or NO_x in the NEC Directive being exceeded or the risk of its being exceeded, is an individual entitled, on the basis of Article 4 of that directive:

(a) to make a general claim that the Member State concerned should adopt a package of measures which, by 2010 at the latest, would limit the annual national emissions of SO_2 and NO_x to amounts not greater than the national emission ceilings in the NEC Directive, or, if that does not succeed, a package of measures which would limit the emissions to those amounts as soon as possible thereafter;

(b) to make concrete claims that the Member State concerned should adopt specific measures in respect of an individual installation — for example, by refusing a permit or attaching further conditions or restrictions to the permit — which, by the year 2010 at the latest, would contribute to the annual national emissions of SO_2 and NO_x being limited to amounts not greater than the national emission ceilings in the NEC Directive, or, if that does not succeed, specific measures which would contribute to the emissions being limited to those amounts as soon as possible thereafter?

(c) In answering Questions 6(a) and 6(b), is the extent to which the installation contributes to the emission ceiling being exceeded or the risk of its being exceeded of significance?'

43 By order of the President of the Court of 24 June 2009, Cases C-165/09 to C-167/09 were joined for the purposes of the written and oral procedure and the judgment.

Admissibility

44 RWE, Electrabel and E.On contest the admissibility of the references for a preliminary ruling.

45 In particular, those companies submit, first, that inasmuch as the questions referred relate to interpretation of the provisions of the NEC Directive, they bear no relation to the subject-matter of the main actions, which concern grant of an environmental permit under the national rules which have transposed the IPPC Directive into domestic law, and second, that the questions referred are hypothetical as the national programmes adopted enable the Kingdom of the Netherlands not to exceed, as at 31 December 2010, the emission ceilings laid down for SO_2 and NO_x.

46 E.On further submits that the Raad van State could have decided the main actions on the basis of existing well-established case-law that leaves no doubt as to the correct application of the European Union law concerned.

47 It should be recalled that, in accordance with settled case-law, in proceedings under Article 267 TFEU, which are based on a clear separation of functions between the national courts and the Court of Justice, the national court alone has jurisdiction to find and assess the facts in the case before it and to interpret and apply national law. Similarly, it is solely for the national court, before which the dispute has been brought and which must assume responsibility for the forthcoming judicial decision, to determine, in the light of the particular circumstances of the case, both the need for and

the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of European Union law, the Court is in principle bound to give a ruling (see Case C-145/03 *Keller* [2005] ECR I-2529, paragraph 33; Case C-119/05 *Lucchini* [2007] ECR I-6199, paragraph 43; and Case C-11/07 *Eckelkamp and Others* [2008] ECR I-6845, paragraphs 27 and 32).

48 The Court is not bound to give a ruling, in particular, where it is quite obvious that the interpretation of European Union law that is sought bears no relation to the actual facts of the main action or its purpose or where the problem is hypothetical (see, to this effect, Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraph 39, and Case C-169/07 *Hartlauer* [2009] ECR I-1721, paragraph 25).

49 However, that is not the case in the present proceedings.

50 In the orders for reference, the Raad van State, first, is uncertain specifically as to whether the obligations flowing from the IPPC Directive, in particular from Article 9, require the competent national authorities to take account, when granting a permit under that directive ('environmental permit'), of the national SO_2 and NO_x ceilings laid down by the NEC Directive. Consequently, it cannot be maintained that the interpretation of the NEC Directive's provisions that is sought bears no relation to the subject-matter of the main proceedings.

51 Second, the Raad van State is unsure as to the scope of the obligations owed by the Member States under Article 4 of the NEC Directive and its other relevant provisions, in particular in situations where risks remain that Member States will not comply with the national SO_2 and NO_x ceilings laid down by that directive. Since the parties do not all agree upon the assessment of the technical information and scientific data which are referred to in this last respect by the Raad van State and such risks cannot be ruled out, it at any rate does not appear obvious that the questions referred are

hypothetical in light of the decisions which the national court is called upon to make in the main actions.

52 Furthermore, as regards E.On's argument that the questions submitted in the present cases concern an interpretation of European Union law that follows fairly clearly from the Court's well-established case-law, it is to be remembered that Article 267 TFEU always allows a national court, if it considers it desirable, to refer questions of interpretation to the Court (see, to this effect, Joined Cases 28/62 to 30/62 *Da Costa and Others* [1963] ECR 31, 38; Case 283/81 *Cilfit and Others* [1982] ECR 3415, paragraph 15; and Case C-45/09 *Rosenbladt* [2010] ECR I-9391, paragraph 31).

53 Consequently, the references for a preliminary ruling must be considered admissible.

Substance

Preliminary remarks

54 In the orders for reference submitted to the Court, the Raad van State mentions both Directive 96/61 and the IPPC Directive, in light of the time material in the main proceedings.

55 However, inasmuch as the provisions of Article 9 of Directive 96/61 and of the IPPC Directive to which the first question relates have the same wording and must therefore

be interpreted in the same way (see Case C-513/99 *Concordia Bus Finland* [2002] ECR I-7213, paragraph 91, and Case C-331/04 *ATI EAC e Viaggi di Maio and Others* [2005] ECR I-10109, paragraph 20), the Court can give a proper answer to the questions by referring only to the consolidated version of those provisions.

Question 1

56 By its first question, the Raad van State asks, in essence, whether Article 9(1), (3) and (4) of the IPPC Directive must be interpreted as meaning that, 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 SO_2 and NO_x laid down by the NEC Directive.

57 It must be stated at the outset that, as all the Member States which have intervened in the present proceedings have also maintained, none of these paragraphs of Article 9 of the IPPC Directive refers, expressly or by implication, to those emission ceilings.

58 Article 9(1) of the IPPC Directive does not refer to the emission ceilings when it obliges Member States to ensure that the environmental permit includes all measures necessary for compliance with the requirements of Article 3 thereof. Article 3 in fact merely requires, first, that installations be operated in such a way that the appropriate preventive measures are adopted so that no significant pollution is caused, in particular through application of the best available techniques, and second, that waste production be avoided or limited in order to reduce the impact on the environment, that energy be used efficiently, and that the necessary measures be taken in order to

prevent accidents or limit their consequences and also, upon definitive cessation of activities, in order to avoid any pollution risk and return the site of operation to a satisfactory state.

59 Nor does any reference result from Article 9(1) of the IPPC Directive, read in conjunction with Article 9(4), in so far as it requires the competent national authorities also to observe, where appropriate, the requirements of Article 10 for the granting of permits.

60 Article 10 of the IPPC Directive provides in particular that additional measures are to be required in the permit where 'environmental quality standards' require stricter conditions than those achievable by the use of the best available techniques.

61 It is apparent, however, from the wording of Article 2(7) of the IPPC Directive that those standards are rules laying down 'requirements which must be fulfilled at a given time by a given environment or particular part thereof' and are therefore linked to the qualitative characteristics of the elements protected.

62 As the Advocate General also has observed in point 63 of her Opinion, the national emission ceilings laid down by the NEC Directive do not involve such characteristics, since those ceilings refer to the total quantity of polluting substances that can be discharged into the atmosphere and not to specific qualitative requirements, relating to concentrations of polluting substances, that must be met at a given time by that particular medium.

63 Likewise, no reference to the emission ceilings in question results from Article 9(3) of the IPPC Directive. It is true that, under that provision, all environmental permits must include emission limit values for polluting substances, including SO_2 and NO_x, likely to be emitted from the installations concerned.

64 However, Article 19(2) of the IPPC Directive provides in this regard that, in the absence of Community emission limit values, it is the values contained 'in the Directives listed in Annex II and in other Community legislation' which are to be applied, as minimum emission limit values, for those installations.

65 The NEC Directive, first, is not among the directives listed in Annex II to the IPPC Directive. Second, inasmuch as it lays down national emission ceilings for pollutants discharged into the atmosphere by multiple unspecified sources and activities, the NEC Directive equally cannot be regarded as 'other Community legislation' containing emission limit values since the latter constitute, under Article 2 of the IPPC Directive, 'the mass, expressed in terms of certain specific parameters, concentration and/or level of an emission, which may not be exceeded during one or more periods of time … [that] normally apply at the point where the emissions leave the installation'.

66 Finally, Article 9(4) of the IPPC Directive contains no reference by implication to the ceilings mentioned in the NEC Directive. The first sentence of that provision merely states that the emission limit values must be based on application of the best available techniques, without prescribing the use of any technique or specific technology, but taking into account the technical characteristics of the installation concerned, its geographical location and the local environmental conditions.

67 Also, the obligation, laid down in the second sentence of Article 9(4) of the IPPC Directive, to see to it that the conditions of the permit contain provisions on the minimisation of long-distance or transboundary pollution and ensure a high level of protection for the environment as a whole, can be interpreted only in the context of the system established by the IPPC Directive itself and in particular of the rule, set out in the first sentence of Article 9(4), under which it is mandatory for the emission limit values to be based on the best available techniques.

68 It should, moreover, be added that the IPPC Directive, which was adopted on the basis of Article 175(1) EC in order to achieve the objectives and implement the principles of the European Union's environment policy which are referred to in Article 174 EC, does not envisage complete harmonisation. In this context, the Member States retain the power, in accordance with Article 9(7) and (8) of the directive, to prescribe other specific — possibly more stringent — permit conditions, and to prescribe certain requirements for certain categories of installations in general binding rules provided that an integrated approach and an equivalent high level of environmental protection as a whole are ensured.

69 That having been explained, it must next be stated that equally no provision of the NEC Directive imposes obligations on the competent national authorities to regard the national emission ceilings for SO_2 and NO_x, when granting an environmental permit, as a condition for the permit.

70 On the contrary, the European Union legislature expressly stated, in recital 19 in its preamble, that the NEC Directive should apply 'without prejudice to [the provisions of the IPPC Directive] in relation to emission limit values and use of best available techniques', thereby indicating that the obligations owed by the Member States under the NEC Directive cannot directly affect those flowing, inter alia, from Article 9 of the IPPC Directive.

71 This interpretation is borne out, finally, by the different purpose and the general scheme of both of the directives in question.

72 The objective of the IPPC Directive, as set out in essence in Article 1 thereof, is to achieve integrated prevention and control of pollution by the implementation of measures designed to prevent or, where that is not practicable, to reduce emissions, from the activities referred to there, in the air, water and land in order to achieve a high level of protection of the environment taken as a whole. That integrated approach is realised by appropriate coordination of the procedure and authorisation conditions for industrial installations whose potential for pollution is significant (see to this effect, in respect of Directive 96/61, Case C-473/07 *Association nationale pour la protection des eaux et rivières and OABA* [2009] ECR I-319, paragraphs 25 and 26).

73 For this purpose, as the Commission stated in its Communication of 21 December 2007 to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions — Towards an improved policy on industrial emissions (COM(2007) 843 final), the IPPC Directive establishes the principles for the permitting and control of large industrial installations based on an integrated approach and the application of best available techniques, which are the most effective techniques to achieve a high level of environmental protection, taking into account the costs and benefits.

74 On the other hand, the NEC Directive is intended, as follows from Articles 1 and 2 thereof, to limit emissions, produced by any source, of acidifying and eutrophying pollutants and ozone precursors in order to improve the protection of the environment and human health, with the long-term objective of not exceeding critical levels and loads.

75 Furthermore, as is clear from Article 4 of the NEC Directive and recitals 11 and 12 in its preamble, that directive is based on a purely programmatic approach under which the Member States enjoy wide flexibility as regards the choice of the policies and measures to be adopted or envisaged, within the framework of national programmes concerning all sources of pollution, in order progressively to achieve a structural reduction of emissions of inter alia SO_2 and NO_x to amounts not exceeding, at the end of 2010 at the latest, the emission ceilings laid down in Annex I to the directive. It follows that attainment of the objectives set by the directive cannot interfere directly in the procedures for grant of an environmental permit.

76 In light of all the foregoing considerations, the answer to the first question therefore is that Article 9(1), (3) and (4) of the IPPC Directive must be interpreted as meaning that, when granting an environmental permit for the construction and operation of an industrial installation, such as those at issue in the main actions, the Member States are not obliged to include among the conditions for grant of that permit the national emission ceilings for SO_2 and NO_x laid down by the NEC Directive, whilst they 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 inter alia those pollutants to amounts not exceeding the ceilings laid down in Annex I to that directive by the end of 2010 at the latest.

Questions 2 and 3

77 By its second and third questions, which it is appropriate to examine together, the national court asks in essence, first, what obligations are owed by the Member States under the NEC Directive during the period between 27 November 2002, when the time-limit for its transposition expired, and 31 December 2010, the deadline after

which the Member States must comply with the emission ceilings laid down by it. Second, the national court is uncertain whether, in light of those obligations, 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 for SO_2 and NO_x under the NEC Directive are exceeded or risk being exceeded.

Obligation to refrain from taking any measures liable seriously to compromise the attainment of the result prescribed by a directive

78 First of all, it is to be remembered that it is settled case-law that, during the period prescribed for transposition of a directive, the Member States to which it is addressed must refrain from taking any measures liable seriously to compromise the attainment of the result prescribed by that directive (Case C-129/96 *Inter-Environnement Wallonie* [1997] ECR I-7411, paragraph 45; Case C-14/02 *ATRAL* [2003] ECR I-4431, paragraph 58; and Joined Cases C-261/07 and C-299/07 *VTB-VAB and Galatea* [2009] ECR I-2949, paragraph 38). Such an obligation to refrain owed by all the national authorities (see Case C-212/04 *Adeneler and Others* [2006] ECR I-6057, paragraph 122 and the case-law cited) must be understood as referring to the adoption of any measure, general or specific, liable to produce such a compromising effect.

79 This obligation to refrain from taking measures is also owed by the Member States, by virtue of the application of Article 4(3) TEU in conjunction with the third paragraph of Article 288 TFEU, during a transitional period in which they are authorised to continue to apply their national systems, even though those systems do not comply with the directive in question (see Case C-316/04 *Stichting Zuid-Hollandse Milieufederatie* [2005] ECR I-9759, paragraph 42, and Case C-138/05 *Stichting Zuid-Hollandse Milieufederatie* [2006] ECR I-8339, paragraph 42).

80 It therefore follows that such an obligation is also to be complied with in the transitional period provided for in Article 4 of the NEC Directive, during which the Member States are authorised not to comply for the time being with the annual national emission quantities laid down in Annex I to that directive. It is for the national court to review whether this obligation has been complied with in the light of the provisions and measures whose legality it is called upon to examine (see, to this effect, *Inter-Environnement Wallonie*, paragraph 46).

81 Nevertheless, 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.

82 Having regard to the system established by the NEC Directive and, in particular, to the programmatic approach, as noted in paragraph 75 of the present judgment, for which it provides, attainment of the result prescribed by that directive can be seriously impeded by the Member States only by the adoption and implementation of a body of policies and measures which, given, in particular, their effects in practice and their duration in time, allow or give rise to a critical situation in light of the total quantity of emissions discharged into the atmosphere by all sources of pollution, such as necessarily to compromise compliance, at the end of 2010, with the ceilings laid down in Annex I to the directive (see, by analogy, *Inter-Environnement Wallonie*, paragraphs 47 and 49).

83 It follows that a simple specific measure relating to a single source of SO_2 and NO_x, 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 limiting emissions from those sources of pollution into the atmosphere to annual total amounts not exceeding the national ceilings in 2010 at the latest. This conclusion applies all the more where, in circumstances such as those in the main actions, the installation in question is not to be brought into operation until 2012 at the earliest.

Positive obligations owed by the Member States during the transitional period from 27 November 2002 to 31 December 2010

84 With regard to the question of whether and, if so, what positive obligations are owed by the Member States during the transitional period from 27 November 2002 to 31 December 2010, it should be recalled that, in accordance with settled case-law, the obligation of a Member State to take all the measures necessary to achieve the result prescribed by a directive is a binding obligation imposed by the third paragraph of Article 288 TFEU and by the directive itself (Case 152/84 *Marshall* [1986] ECR 723, paragraph 48; Case 72/95 *Kraaijeveld and Others* [1996] ECR I-5403, paragraph 55; and *Inter-Environnement Wallonie*, paragraph 40).

85 It follows from that obligation that, during the period prescribed for transposition, the Member States must take the measures necessary to ensure that the result prescribed by the directive is achieved at the end of that period (*Inter-Environnement Wallonie*, paragraph 44). The same is true as regards a transitional period, such as the period provided for in Article 4 of the NEC Directive.

86 It should be noted that the NEC Directive itself lays down certain positive obligations on the Member States during that period, concerning in particular the establishment of overall action strategies with the aim of progressively reducing annual emissions of the pollutants concerned, by the end of 2010 at the latest, to amounts not exceeding the ceilings laid down by Annex I to the directive.

87 More specifically, under Articles 6 and 8(2) of the NEC Directive, the Member States must draw up by 1 October 2002 at the latest, and then update and revise as necessary by 1 October 2006 at the latest, programmes for the progressive reduction of the emissions in question, which they are 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. Articles 7(1) and (2) and 8(1) of the NEC Directive also oblige the Member States to prepare and annually update national inventories of those emissions and national emission projections for 2010. The final emission inventories for the previous year but one and the provisional emission inventories for the previous year, as well as the national emission projections for 2010, must be reported to the Commission and the European Environment Agency each year, by 31 December at the latest (see, to this effect, the judgment of 18 December 2008 in Case C-273/08 *Commission* v *Luxembourg*, not published in the ECR, paragraphs 2 and 11).

88 As regards the specific content of those national programmes, it must nevertheless be found that, as noted in paragraph 75 of the present judgment, the wide flexibility accorded to the Member States by the NEC Directive prevents 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 take account globally of the factual circumstances and the various competing public and private interests.

89 The imposition of any requirements to that effect would run counter to the intention of the European Union legislature, whose aim in particular is 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 and would, accordingly, be contrary to the principle of proportionality, laid down in Article 5 TEU and expressly borne in mind in recital 13 in the preamble to the NEC Directive, which requires that the means deployed by a provision of European Union law be appropriate for attaining the legitimate objectives pursued by the legislation at issue and must not go beyond what is necessary to achieve them (see Joined Cases C-453/03, C-11/04, C-12/04 and C-194/04 *ABNA and Others* [2005] ECR I-10423, paragraph 68 and the case-law cited, and Case C-58/08 *Vodafone and Others* [2010] ECR I-4999, paragraph 51).

90 It accordingly follows that, during the transitional period from 27 November 2002 to 31 December 2010, the third paragraph of Article 288 TFEU and the NEC Directive itself do not require the Member States to refuse or to attach restrictions to the grant of an environmental permit such as those at issue in the main actions, or to adopt specific compensatory measures for each permit granted of that kind, even where the national emission ceilings for SO_2 and NO_x are exceeded or risk being exceeded.

91 In light of all the foregoing reasoning, the answer to the second and third questions is that during the transitional period from 27 November 2002 to 31 December 2010, provided for in Article 4 of the NEC Directive:

— Article 4(3) TEU, the third paragraph of Article 288 TFEU and the NEC Directive require the Member States to refrain from adopting any measures liable seriously to compromise the attainment of the result prescribed by that directive;

— adoption by the Member States of a specific measure relating to a single source of SO_2 and NO_x does not appear liable, in itself, seriously to compromise the attainment of the result prescribed by the NEC Directive. It is for the national court to review whether that is true of each of the decisions granting an environmental permit for the construction and operation of an industrial installation such as the permits at issue in the main actions;

— the third paragraph of Article 288 TFEU and Articles 6, 7(1) and (2) and 8(1) and (2) of the NEC Directive require the Member States, first, to draw up, to update and to revise as necessary programmes for the progressive reduction of national SO_2 and NO_x emissions, which they are 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, and second, to prepare and annually update national inventories of those emissions and national emission projections for 2010, which they must report to the Commission and the European Environment Agency within the time-limit prescribed;

— the third paragraph of Article 288 TFEU and the NEC Directive itself do not require the Member States to refuse or to attach restrictions to the grant of an environmental permit for the construction and operation of an industrial installation such as the permits at issue in the main actions, or to adopt specific compensatory measures for each permit granted of that kind, even where the national emission ceilings for SO_2 and NO_x are exceeded or risk being exceeded.

Questions 4 to 6

92 By its fourth, fifth and sixth questions, which it is appropriate to examine together, the national court asks in essence whether and, if so, to what extent an individual can rely directly before the national courts upon the obligations imposed by Articles 4 and 6 of the NEC Directive.

93 It is to be recalled at the outset that it is settled case-law that, whenever provisions of a directive appear, so far as their subject-matter is concerned, to be unconditional and sufficiently precise, they may be relied upon by individuals against the Member State where the latter has failed to implement the directive in domestic law by the end of the period prescribed or where it has failed to implement the directive

correctly (see, inter alia, Joined Cases C-6/90 and C-9/90 *Francovich and Others* [1991] ECR I-5357, paragraph 11; Case C-62/00 *Marks & Spencer* [2002] ECR I-6325, paragraph 25; and Joined Cases C-397/01 to C-403/01 *Pfeiffer and Others* [2004] ECR I-8835, paragraph 103).

94 As the Court of Justice has pointed out on numerous occasions, it would be incompatible with the binding effect which the third paragraph of Article 288 TFEU ascribes to a directive to exclude, in principle, the possibility of the obligation imposed by a directive being relied on by persons concerned. That consideration applies particularly in respect of a directive whose objective is to control and reduce atmospheric pollution and which is designed, therefore, to protect public health (see Case C-237/07 *Janecek* [2008] ECR I-6221, paragraph 37).

95 It should nevertheless be noted in this regard that a provision of European Union law is unconditional where it sets forth an obligation which is not qualified by any condition, or subject, in its implementation or effects, to the taking of any measure either by the institutions of the European Union or by the Member States (see, inter alia, Case 28/67 *Molkerei-Zentrale Westfalen/Lippe* [1968] ECR 143 and Case C-236/92 *Comitato di coordinamento per la difesa della cava and Others* [1994] ECR I-483, paragraph 9).

96 It is clear that Article 4 of the NEC Directive does not display the characteristics set out above.

97 Viewed in its context, that article is purely programmatic in nature, in that it merely lays down an objective to be attained, leaving the Member States wide flexibility as to the means to be employed in order to reach that objective.

98 It follows that, since it does not lay down any unconditional and sufficiently precise obligation requiring the adoption of specific individual policies or measures intended to enable the result prescribed to be achieved, individuals cannot rely directly before a national court upon Article 4 of 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 such as those at issue in the main actions, or should adopt specific compensatory measures following the grant of such a permit.

99 On the other hand, Article 6 of the NEC Directive is unconditional and sufficiently precise in that it requires the Member States in unequivocal terms, first, under Article 6(1) and (3), to draw up national programmes for the progressive reduction of national emissions of inter alia SO_2 and NO_x in order to comply with the ceilings laid down in Annex I to the directive by the end of 2010 at the latest and, second, as provided in Article 6(4), to make those programmes available to the public and to appropriate organisations such as environmental organisations by means of clear, comprehensible and easily accessible information.

100 It follows that the natural and legal persons directly concerned must be able to require the competent authorities, if necessary by bringing the matter before the national courts, to observe and implement such rules of European Union law.

101 As to the content of the programmes that must be drawn up, it is true that, as follows from paragraph 88 of the present judgment, the Member States have wide flexibility in selecting the specific initiatives to be implemented, whilst it is also true that they are not obliged to adopt policies and measures to ensure that ceilings are not exceeded before the end of 2010.

102 It is apparent, however, from Article 6 of the NEC Directive and from the scheme of that directive, which seeks a progressive reduction of national emissions of the pollutants expressly referred to, that the Member States have the task, during the transitional period from 27 November 2002 to 31 December 2010, of adopting or envisaging appropriate and coherent policies and measures capable of reducing, as a whole, emissions of those pollutants so as to comply with the national ceilings laid down in Annex I to the directive.

103 Whilst the Member States thus have a discretion, Article 6 of the NEC Directive nevertheless involves limits on its exercise, which are capable of being relied upon before the national courts, relating to the appropriateness of the body of policies and measures adopted or envisaged within the framework of the respective national programmes to the objective of limiting, by the end of 2010 at the latest, emissions of the pollutants covered to amounts not exceeding the ceilings laid down for each Member State (see, to this effect, *Janecek*, paragraph 46).

104 In light of the foregoing considerations, the answer to the fourth, fifth and sixth questions therefore is as follows:

— Article 4 of the NEC Directive is not unconditional and sufficiently precise for individuals to be able to rely upon it before the national courts before 31 December 2010.

— Article 6 of the NEC Directive grants rights to individuals directly concerned which can be relied upon 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 Annex I to 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.

Costs

105 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

1. **Article 9(1), (3) and (4) of Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control, in its original version and as codified by Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control, must be interpreted as meaning that, when granting an environmental permit for the construction and operation of an industrial installation, such as those at issue in the main actions, the Member States are not obliged to include among the conditions for grant of that permit the national emission ceilings for SO_2 and NO_x laid down by Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants, whilst they must comply with the obligation arising from Directive 2001/81 to adopt or envisage, within the framework of national programmes, appropriate and coherent policies and measures capable of reducing, as a whole, emissions of**

inter alia those pollutants to amounts not exceeding the ceilings laid down in Annex I to that directive by the end of 2010 at the latest.

2. During the transitional period from 27 November 2002 to 31 December 2010, provided for in Article 4 of Directive 2001/81:

— **Article 4(3) TEU, the third paragraph of Article 288 TFEU and Directive 2001/81 require the Member States to refrain from adopting any measures liable seriously to compromise the attainment of the result prescribed by that directive;**

— **adoption by the Member States of a specific measure relating to a single source of SO_2 and NO_x does not appear liable, in itself, seriously to compromise the attainment of the result prescribed by Directive 2001/81. It is for the national court to review whether that is true of each of the decisions granting an environmental permit for the construction and operation of an industrial installation such as the permits at issue in the main actions;**

— **the third paragraph of Article 288 TFEU and Articles 6, 7(1) and (2) and 8(1) and (2) of Directive 2001/81 require the Member States, first, to draw up, to update and to revise as necessary programmes for the progressive reduction of national SO_2 and NO_x emissions, which they are obliged to make available to the public and appropriate organisations by means of clear, comprehensible and easily accessible information, and to notify to the European Commission within the time-limit prescribed, and second, to prepare and annually update national inventories of those emissions and national emission projections for 2010, which they must**

report to the European Commission and the European Environment Agency within the time-limit prescribed;

— **the third paragraph of Article 288 TFEU and Directive 2001/81 itself do not require the Member States to refuse or to attach restrictions to the grant of an environmental permit for the construction and operation of an industrial installation such as the permits at issue in the main actions, or to adopt specific compensatory measures for each permit granted of that kind, even where the national emission ceilings for SO_2 and NO_x are exceeded or risk being exceeded.**

3. **Article 4 of Directive 2001/81 is not unconditional and sufficiently precise for individuals to be able to rely upon it before the national courts before 31 December 2010.**

Article 6 of Directive 2001/81 grants rights to individuals directly concerned which can be relied upon 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 Annex I to 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.

[Signatures]