



Press and Information

Court of Justice of the European Union

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Judgment in Case C-636/18
Commission v France

France has systematically and persistently exceeded the annual limit value for nitrogen dioxide since 1 January 2010

The period of that exceedance, which concerns twelve French agglomerations and air quality zones, ought to have been kept as short as possible

On 7 March 2012, France requested the Commission to delay the deadline imposed for compliance with the nitrogen dioxide limit values set by the Air Quality Directive.¹ That request concerned the annual limit values in 24 zones of the French territory and the hourly limit values in three of those zones. The Commission raised objections to that delay request. France did not challenge those objections and was, therefore, under an obligation to comply with the nitrogen dioxide limit values, calculated by hour or by calendar year, as from 1 January 2010.

Due to the exceedances of the annual nitrogen dioxide limit values in many zones of the French territory from 1 January 2010, the Commission, in 2014, initiated infringement proceedings against France.

Subsequently, on 19 June 2015, the Commission formed the view that France had not complied with the limit values applicable to nitrogen dioxide (laid down in Article 13 of the directive) and that, although it had adopted plans relating to air quality and/or other measures aimed at reducing nitrogen dioxide emissions, it had failed to meet its obligation to ensure that the exceedance period would be as short as possible (laid down in Article 23 of the directive).

The Commission therefore called on France to take the necessary measures to meet its obligations and, as a result of the failure of France to take those measures, brought infringement proceedings against that Member State before the Court of Justice.

France does not dispute the fact that there have been persistent exceedances of the hourly and annual limit values of nitrogen dioxide in the zones and agglomerations² which are the subject of the action brought by the Commission. However, France disputes the allegedly systematic nature of those exceedances.

In today's judgment, the Court states that the fact of exceeding the nitrogen dioxide limit values in ambient air is, in itself, sufficient for a finding that there has been a failure to fulfil the obligation laid down in Article 13 of the directive.

The Court notes, in response to France's argument that the delay in applying the directive must be assessed in the light of the structural difficulties encountered at the time of transposition of that directive, that the date from which the nitrogen dioxide limit values had to be complied with was 1 January 2010. The Court adds that, once it has been objectively established that a Member State has failed to fulfil its obligations under the Treaties, it is irrelevant whether the failure to fulfil

¹ Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (OJ 2008 L 152, p. 1).

² Marseille, Toulon, Paris, Auvergne-Clermont-Ferrand, Montpellier, Toulouse Midi-Pyrénées, ZUR Reims Champagne-Ardenne, Grenoble Rhône-Alpes, Strasbourg, Lyon-Rhône-Alpes, ZUR Vallée de l'Arve Rhône-Alpes and Nice as regards exceedance of the annual limit value, and Paris and Lyon Rhône-Alpes as regards exceedance of the hourly limit value.

obligations is the result of intention or negligence on the part of the Member State responsible, or whether it is attributable to technical or structural difficulties which it has encountered.

Furthermore, the Court indicates that the directive provides that, when the exceedance of the nitrogen dioxide limit values has occurred after the passing of the deadline for achieving them, the Member State concerned is required to draw up an air-quality plan which meets certain requirements. That plan must set out appropriate measures to ensure that the exceedance period can be kept as short as possible and may additionally include specific measures designed to protect sensitive population groups, including children. The plan must be communicated to the Commission without delay, but no later than two years after the end of the year during which the first exceedance was observed.

The Court points out that the fact that a Member State exceeds nitrogen dioxide limit values in ambient air does not, in itself, suffice for a finding that it has failed to fulfil its obligation under Article 23 of the directive. Nevertheless, according to the directive, although Member States have some discretion in determining the measures to be adopted, those measures must, in any event, enable the exceedance period to be kept as short as possible.

The Court, however, finds that France manifestly did not adopt, in a timely manner, appropriate measures to ensure that the exceedance period would be kept as short as possible. Thus, the exceedance of the limit values at issue during seven consecutive years remained systematic and persistent in that Member State, notwithstanding France's obligation to take all appropriate and effective measures to comply with the requirement that the exceedance period be kept as short as possible.

The Court concludes that such a situation demonstrates by itself that France did not implement appropriate and effective measures to ensure that the exceedance period of nitrogen dioxide limit values would be kept 'as short as possible' within the meaning of the directive.

The Court accordingly upholds the Commission's action and finds that France has failed to fulfil its obligations under the Air Quality Directive.

NOTE: An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under EU law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

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

Press contact: Jacques René Zammit 📞 (+352) 4303 3355