Provisional text

OPINION OF ADVOCATE GENERAL
KOKOTT
delivered on 5 May 2022 (1)

Case C-61/21

JP
v
Ministre de la Transition écologique,
Premier ministre

(Request for a preliminary ruling from the Cour administrative d'appel de Versailles (Administrative Court of Appeal, Versailles, France))

(Request for a preliminary ruling – Directive 2008/50/EC – Ambient air quality – Limit values for the protection of human health – Exceedance – Air quality plans – State liability – Right of an individual to obtain compensation for damage to health resulting from an infringement of EU law – Serious infringement – Direct causal link – Time at which the infringement is to be assessed)

I. Introduction

1. The ambitious limit values for ambient air quality under Directive 2008/50 (2) are not (yet?) sufficiently observed in many places. (3) Important decisions in this area are, however, expected in 2022. At the political level, the European Commission is planning proposals to revise the current rules. (4) At the same time, various cases in which the Court can clarify important issues concerning the enforcement of the legislation are currently pending. In addition to one request for a preliminary ruling concerning the relevance of Directive 2008/50 to the authorisation of projects (5) and another concerning the first penalty payment proceedings to enforce a judgment finding that a Member State infringed that directive, (6) the present case raises the question as to whether individuals are able to demand compensation for damage to health resulting from an infringement of the limit values.

2. At the heart of this case is the first requirement of non-contractual liability of Member States for infringement of EU law, namely the question as to whether the provisions of Directive 2008/50 establish rights for individuals. In addition, it is necessary to examine the conditions under which a possible infringement of Directive 2008/50 is sufficiently serious, and the proof of a direct causal link between the infringement and the damage, in order to provide the referring court with guidance as to the relevant point in time for the assessment of the infringement.

II. Legal framework

3. For the period relevant to the main proceedings, the rules on air quality were initially laid down in Directives 96/62 (7) and 1999/30, (8) which were replaced by Directive 2008/50 with effect from 11 June 2010.

A. Directive 96/62

4. According to the first indent of Article 1 of Directive 96/62, the aim of that directive was to define the basic principles of a common strategy to 'define and establish objectives for ambient air quality in the Community designed to avoid, prevent or reduce harmful effects on human health and the environment as a whole'. This is also apparent from the second recital.

5. Article 2(5) of Directive 96/62 defined the term 'limit value' as 'a level fixed on the basis of scientific knowledge, with the aim of avoiding, preventing or reducing harmful effects on human health and/or the environment as a whole, to be attained within a given period and not to be exceeded once attained'.

6. Article 7 of Directive 96/62 contained the general requirements for the improvement of ambient air quality:

'1. Member States shall take the necessary measures to ensure compliance with the limit values.

2. Measures taken in order to achieve the aims of this Directive shall:

(a) take into account an integrated approach to the protection of air, water and soil;

(b) not contravene Community legislation on the protection of safety and health of workers at work;

(c) have no significant negative effects on the environment in the other Member States.

3. Member States shall draw up action plans indicating the measures to be taken in the short term where there is a risk of the limit values and/or alert thresholds being exceeded, in order to reduce that risk and to limit the duration of such an occurrence. Such plans may, depending on the individual case, provide for measures to control and, where necessary, suspend activities, including motor-vehicle traffic, which contribute to the limit values being exceeded.'

7. Article 8 of the directive concerned zones where levels are higher than the limit value:

'1. Member States shall draw up a list of zones and agglomerations in which the levels of one or more pollutants are higher than the limit value plus the margin of tolerance.

Where no margin of tolerance has been fixed for a specific pollutant, zones and agglomerations in which the level of that pollutant exceeds the limit value shall be treated in the same way as the zones and agglomerations referred to in the first subparagraph, and paragraphs 3, 4 and 5 shall apply to them.

…

3. In the zones and agglomerations referred to in paragraph 1, Member States shall take measures to ensure that a plan or programme is prepared or implemented for attaining the limit value within the specific time limit.

The said plan or programme, which must be made available to the public, shall incorporate at least the information listed in Annex IV.

4. In the zones and agglomerations referred to in paragraph 1, where the level of more than one pollutant is higher than the limit values, Member States shall provide an integrated plan covering all the pollutants concerned.

…'

8. In accordance with the twelfth recital of Directive 96/62, that provision also served to protect health and the environment as a whole.

9. Article 11(1)(a)(iii) of Directive 96/62 specifies a time limit for sending plans under Article 8:

'In the zones referred to in Article 8(1) [Member States] shall:

…

(iii) send to the Commission the plans or programmes referred to in Article 8(3) no later than two years after the end of the year during which the levels were observed'.

10. Annex IV to Directive 96/62 provided that the plans or programmes for attaining the limit values were to contain, in particular, information on the causes of pollution and time projections for the improvement in ambient air quality resulting from the measures taken:

'1. *Localization of excess pollution*

– region

– city (map)

– measuring station (map, geographical coordinates).

2. *General information*

– type of zone (city, industrial or rural area)

– estimate of the polluted area (km^2) and of the population exposed to the pollution

– useful climatic data

– relevant data on topography

– sufficient information on the type of targets requiring protection in the zone.

…

4. *Nature and assessment of pollution*

– concentrations observed over previous years (before the implementation of the improvement measures)

– concentrations measured since the beginning of the project

– techniques used for the assessment.

5. *Origin of pollution*

– list of the main emission sources responsible for pollution (map)

– total quantity of emissions from these sources (tonnes/year)

– information on pollution imported from other regions.

6. *Analysis of the situation*

– details of those factors responsible for the excess (transport, including cross-border transport, formation)

– details of possible measures for improvement of air quality.

7. *Details of those measures or projects for improvement which existed prior to the entry into force of this Directive i.e.*

– local, regional, national, international measures

– observed effects of these measures.

8. *Details of those measures or projects adopted with a view to reducing pollution following the entry into force of this Directive*

– listing and description of all the measures set out in the project

– timetable for implementation

– estimate of the improvement of air quality planned and of the expected time required to attain these objectives.

9. *Details of the measures or projects planned or being researched for the long term.*

...'

B. Directive 1999/30

11. Directive 1999/30 laid down the limit values and alert thresholds for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air required for the application of Directive 96/62. Article 1 of Directive 1999/30 confirms that the objective of that legislation was to avoid, prevent or reduce harmful effects on human health and the environment as a whole.

12. For nitrogen dioxide (NO2), the limit values for the protection of human health as laid down in Article 4 of and Section I of Annex II to Directive 1999/30 applied from 1 January 2010. First, the one-hour limit value of 200 $\mu g/m^3$ may not be exceeded more than 18 times in any calendar year. Second, the annual limit value was set at 40 $\mu g/m^3$.

13. For particulate matter (PM10), however, the limit values for the protection of human health as laid down in Article 5 and Annex III, Section I, Stage 1, of Directive 1999/30 applied already from 1 January 2005. The 24-hour limit value for the protection of human health of 50 $\mu g/m^3$ of PM10 may not be exceeded more than 35 times in any calendar year. The annual limit value was set at 40 $\mu g/m^3$ of PM10.

C. Directive 2008/50

14. Recitals 1 and 2 of Directive 2008/50 describe the overarching objectives of that directive:

'(1) The Sixth Community Environment Action Programme … establishes the need to reduce pollution to levels which minimise harmful effects on human health, paying particular attention to sensitive

populations, and the environment as a whole, to improve the monitoring and assessment of air quality including the deposition of pollutants and to provide information to the public.

(2) In order to protect human health and the environment as a whole, it is particularly important to combat emissions of pollutants at source and to identify and implement the most effective emission reduction measures at local, national and Community level. Therefore, emissions of harmful air pollutants should be avoided, prevented or reduced and appropriate objectives set for ambient air quality taking into account relevant World Health Organisation standards, guidelines and programmes.'

15. Article 1(1) of Directive 2008/50 sets out its essential objective:

'This Directive lays down measures aimed at the following:

1. defining and establishing objectives for ambient air quality designed to avoid, prevent or reduce harmful effects on human health and the environment as a whole'.

16. Article 2(5) of Directive 2008/50 defines the term 'limit value' as a 'level fixed on the basis of scientific knowledge, with the aim of avoiding, preventing or reducing harmful effects on human health and/or the environment as a whole, to be attained within a given period and not to be exceeded once attained'.

17. Article 13(1) of Directive 2008/50 lays down an obligation to comply with various limit values:

'Member States shall ensure that, throughout their zones and agglomerations, levels of sulphur dioxide, PM10, lead, and carbon monoxide in ambient air do not exceed the limit values laid down in Annex XI.

In respect of nitrogen dioxide and benzene, the limit values specified in Annex XI may not be exceeded from the dates specified therein.

Compliance with these requirements shall be assessed in accordance with Annex III.

…'

18. The limit values for nitrogen dioxide and for particulate matter (PM10) in Annex XI to Directive 2008/50, which are relevant in the present case, correspond to the limit values in Directive 1999/30.

19. Article 22 of Directive 2008/50 allows the deadline for conformity to be postponed under certain conditions:

'1. Where, in a given zone or agglomeration, conformity with the limit values for nitrogen dioxide or benzene cannot be achieved by the deadlines specified in Annex XI, a Member State may postpone those deadlines by a maximum of five years for that particular zone or agglomeration, on condition that an air quality plan is established in accordance with Article 23 for the zone or agglomeration to which the postponement would apply; such air quality plan shall be supplemented by the information listed in Section B of Annex XV related to the pollutants concerned and shall demonstrate how conformity will be achieved with the limit values before the new deadline.

2. Where, in a given zone or agglomeration, conformity with the limit values for PM10 as specified in Annex XI cannot be achieved because of site-specific dispersion characteristics, adverse climatic conditions or transboundary contributions, a Member State shall be exempt from the obligation to apply those limit values until 11 June 2011 provided that the conditions laid down in paragraph 1 are fulfilled and that the Member State shows that all appropriate measures have been taken at national, regional and local level to meet the deadlines.

…

4. Member States shall notify the Commission where, in their view, paragraphs 1 or 2 are applicable, and shall communicate the air quality plan referred to in paragraph 1 including all relevant information necessary for the Commission to assess whether or not the relevant conditions are satisfied. In its assessment, the Commission shall take into account estimated effects on ambient air quality in the Member States, at present and in the future, of measures that have been taken by the Member States as well as estimated effects on ambient air quality of current Community measures and planned Community measures to be proposed by the Commission.

Where the Commission has raised no objections within nine months of receipt of that notification, the relevant conditions for the application of paragraphs 1 or 2 shall be deemed to be satisfied.

If objections are raised, the Commission may require Member States to adjust or provide new air quality plans.'

20. According to the Commission, (9) for the Paris agglomeration, the area at issue in the present case, the French Republic did send notifications with a view to postponing the deadlines for PM10 and nitrogen dioxide, but the Commission raised objections in each case. (10)

21. Article 23(1) of Directive 2008/50 provides that where limit values are exceeded in given zones or agglomerations, air quality plans must be established in order to achieve those values:

'Where, in given zones or agglomerations, the levels of pollutants in ambient air exceed any limit value or target value, plus any relevant margin of tolerance in each case, Member States shall ensure that air quality plans are established for those zones and agglomerations in order to achieve the related limit value or target value specified in Annexes XI and XIV.

In the event of exceedances of those limit values for which the attainment deadline is already expired, the air quality plans shall set out appropriate measures, so that the exceedance period can be kept as short as possible. …

Those air quality plans shall incorporate at least the information listed in Section A of Annex XV … Those plans shall be communicated to the Commission without delay, but no later than two years after the end of the year the first exceedance was observed.

…'

22. The requirements laid down in Section A of Annex XV to Directive 2008/50 correspond, in essence, to those laid down in Annex IV to Directive 96/62.

III. Facts and request for a preliminary ruling

23. The request for a preliminary ruling is based on the fact that the limit values for ambient air quality have been exceeded in the Paris agglomeration. In 2019, for example, the Court found that the limit values for nitrogen dioxide had been exceeded since the point at which they had to be complied with, in 2010. (11) Moreover, it recently decided that the limit values for PM10 from 2005 to 2019 were also not complied with. (12) The Conseil d'État (Council of State, France) has also established continuing exceedance of the limit values for Paris for nitrogen dioxide into 2020, as well as exceedance of the limit values for PM10 for the years up to 2018 and for 2019. (13)

24. The applicant in the main proceedings requests that the Prefect of the Département du Val-d'Oise, which is an area of the Paris agglomeration, take measures to comply with the limit values under Directive 2008/50. In addition, he seeks compensation for the various heads of damages which he attributes to air pollution, assessed at EUR 21 million. He submits that he has been suffering from the health problems since 2003 and they have become even worse over time.

25. In support of his claim for compensation, the applicant submits, in particular, that he has suffered damage to his health as a result of the deterioration of the ambient air in the Paris agglomeration, where he lives. He considers that that deterioration is the result of a breach by the French authorities of their obligations under Directive 2008/50. Therefore, he puts the State's liability in issue in order to obtain compensation for the alleged damage to his health.

26. The action having been dismissed by the Tribunal administratif de Cergy-Pontoise (Administrative Court, Cergy-Pontoise, France), an appeal is now pending before the Cour administrative d'appel de Versailles (Administrative Court of Appeal, Versailles, France). The latter court states that the decision on the claim for compensation requires clarification of the scope of Article 13(1) and Article 23(1) of Directive 2008/50. According to that court, the question is whether individuals are entitled to compensation for damage to their health in the event of a sufficiently serious breach by an EU Member State of the obligations arising from those provisions.

27. The Cour administrative d'appel de Versailles (Administrative Court of Appeal, Versailles) therefore refers the following questions to the Court:

'(1) Must the applicable rules of EU law resulting from the provisions of Article 13(1) … and of Article 23(1) … of Directive [2008/50] be interpreted as entitling individuals, in the event of a sufficiently serious breach by an EU Member State of the obligations resulting from those rules, to claim compensation from the Member State concerned for damage to their health in cases where there is a direct and certain causal link with the deterioration in air quality?

(2) On the assumption that the provisions referred to above may indeed give rise to such an entitlement to compensation for damage to health, to what conditions is that entitlement subject, in particular with regard to the date on which the existence of the failure attributable to the Member State concerned must be assessed?'

28. The applicant in the main proceedings, the French Republic, Ireland the Italian Republic, the Republic of Poland and the Commission submitted written observations. The French Republic, Ireland, the Kingdom of the Netherlands, the Republic of Poland and the Commission attended the hearing held on 15 March 2022.

IV. Legal assessment

29. In connection with the enforcement of EU legislation on the protection of ambient air quality, the Court has already recalled the principle of State liability for loss or damage caused to individuals as a result of breaches of EU law for which the State can be held responsible. (14) The present request for a preliminary ruling is now intended to clarify the extent to which an infringement of the limit values for the protection of ambient air quality under EU law can in fact give rise to entitlement to compensation.

30. According to settled case-law, the full effectiveness of EU rules would be impaired and the protection of the rights which they grant would be weakened if individuals were unable to obtain reparation when their rights are infringed by a breach of EU law for which a Member State can be held responsible. (15)

31. Accordingly, individuals who have suffered damage have a right to compensation if three conditions are met, namely that the rule of EU law infringed is intended to confer rights on them, that the infringement of that rule is sufficiently serious and that there is a direct causal link between that infringement and the damage suffered by those individuals. (16)

32. The first question referred proceeds on the basis that there is a sufficiently serious infringement and a direct causal link. It seeks to ascertain whether the ambient air quality requirements under Directive 2008/50 confer rights on individuals, that is to say, whether an infringement of those requirements can give

rise to entitlement to compensation at all (see section A). If that is the case, the second question seeks clarification as to the conditions to which that entitlement is subject, in particular with regard to the date on which the existence of the failure attributable to the Member State concerned must be assessed. To that end, it will then be necessary to examine the conditions under which a serious infringement and a direct causal link must be established (see section B).

A. First question – whether the rules on ambient air quality confer rights

33. Entitlement to compensation for an infringement of EU law presupposes, first, that the rule of EU law infringed must be intended to confer rights on individuals. (17)

34. It is true that, in connection with the establishment of entitlement to compensation, it does not matter whether the rule in question is directly applicable. (18) Nevertheless, direct applicability provides a significant indication that rights are to be conferred, (19) because, in that case, the content of the right conferred can be identified, which is a condition of entitlement to compensation. (20)

35. Therefore, it must first be examined whether the rules on limit values and on measures to improve ambient air quality are sufficiently clear to be able to identify the content of potential rights. It can then be assessed whether those rules are intended to confer rights on individuals.

1. Clarity of the content of the rules of Directives 96/62 and 1999/30

36. Although the request for a preliminary ruling relates only to Directive 2008/50, the main proceedings concern harm suffered by the applicant since 2003. Between that point in time and the expiry of the deadline for transposing Directive 2008/50, 11 June 2010, Directives 96/62 and 1999/30 initially regulated ambient air quality in relation to the pollutants referred to in the request for a preliminary ruling, PM10 (particulate matter) and nitrogen dioxide.

(a) Limit values

37. According to Article 7(1) of Directive 96/62, Member States are to take the necessary measures to ensure compliance with the limit values. The limit values for nitrogen dioxide resulted from Article 4 of Directive 1999/30, read in conjunction with Annex II thereto, and applied from 1 January 2010.

38. The limit values for PM10 were laid down in Article 5 of Directive 1999/30, read in conjunction with Annex III, Section I, Stage 1, and applied from 1 January 2005.

39. The abovementioned limit values and dates were later incorporated unchanged into Annex XI to Directive 2008/50.

40. Therefore, the obligation to comply with the limit values has existed since the point in time specified in each case and is clear and unconditional, on the basis of the wording of the relevant provisions. (21)

(b) Improvement of ambient air quality

41. In addition, Directive 96/62 already contained rules on the improvement of ambient air quality for the period both before and after the expiry of the time limits for the application of the limit values.

(i) Before the limit values became mandatory

42. An initial obligation to improve ambient air quality already existed before the limit values became mandatory in 2005 and 2010, respectively. Member States were required to take measures at that stage to ensure that the limit values would be complied with at the latest at the moment they became mandatory.

43. The details of that obligation followed from Article 8 of Directive 96/62. First, in accordance with Article 8(1), Member States were required to identify the zones and agglomerations in which the levels of one or more pollutants were higher than the limit value plus the margin of tolerance, likewise specified in Directive 1999/30. In accordance with Article 8(3) of Directive 96/62, in the zones and agglomerations thus identified, Member States were required to prepare or implement plans or programmes in order to attain the limit value within the specific time limit, that is to say, by the time it became mandatory.

44. In that respect, the margin of tolerance referred to a certain percentage of the respective limit values, which was linearly reduced to 0% between the point at which the limit values were set and the time of their application. The margin of tolerance therefore became ever smaller as the time of application of the limit values approached. The margin of tolerance disappeared completely when the associated limit value became applicable.

45. That obligation presumably already related to many zones and agglomerations in which the limit values were later exceeded upon the expiry of the time limit for their application, that is to say, in 2005 or 2010. (22)

46. Those plans or programmes had to comply with the requirements of Annex IV to Directive 96/62, which were largely identical to those in Section A of Annex XV to Directive 2008/50. Those requirements are not purely formal in nature, as the information in question documents the origin of the pollution (points 5 and 6), an analysis of possible measures for improvement of air quality (point 6), and the measures adopted and implemented (points 7 to 9), including a timetable and an estimate of the improvement in air quality to be achieved (point 8). The assessment as to whether the plan or programme is capable of bringing about compliance with the limit values upon the expiry of the time limits for their application logically requires that information.

47. It should also be noted that the first subparagraph of Article 23(1) of Directive 2008/50 creates a similar obligation for fine particulate matter of PM2.5 size, whose limit values had to be complied with only after the transposition deadline of that directive.

(ii) After the expiry of the time limits for the application of the limit values

48. Furthermore, Article 7(3) of Directive 96/62 provided that Member States were to draw up action plans indicating the measures to be taken in the short term where there was a risk of the limit values and/or alert thresholds being exceeded, in order to reduce that risk and to limit the duration of such an occurrence.

49. On the basis of the wording of Articles 7 and 8 of Directive 96/62, no provision was made for the possibility of the limit values being exceeded. Prior to the point at which they became applicable, Article 8 required Member States to take the necessary measures to ensure that they were complied with by the time they took effect. For the time after that point, Article 7(3) required Member States to counter merely the *risk* of exceedance. The definition of the term ‘limit value’ in Article 2(5) of Directive 96/62 confirmed this, because, according to that definition, a limit value had to be attained within a given period and could not be exceeded once attained.

50. Nevertheless, in the judgment in *Janecek*, the Court ruled that the Member States were not obliged to take measures to ensure that those limit values and/or alert thresholds are never exceeded. On the contrary, it concluded from the broad logic of Directive 96/62 – which sought an integrated reduction of pollution – that it was for the Member States to take measures capable of reducing to a minimum the risk of the limit values and/or alert thresholds being exceeded and the duration of such an occurrence, taking into account all the material circumstances and opposing interests. In so doing, Member States were required to ensure a balance with the various opposing public and private interests. The limits on that discretion were subject to judicial review. (23)

51. The logic of that judgment can be followed in so far as it was already known at that time that the limit values for PM10 were exceeded in many Member States and that compliance with them would

require considerable efforts. The Commission expected a similar situation with regard to the limit values for nitrogen dioxide, which became applicable in 2010. (24) The expectation that the limit values would not be exceeded, as expressed in the text of Directive 96/62, had therefore proven to be unrealistic. Moreover, shortly before the judgment in *Janecek*, that realisation had led to the adoption of Directive 2008/50, which is examined just below.

52. Furthermore, the Court has rightly emphasised the need to balance the conflicting interests when drawing up action plans. Although the legislature had already anticipated that balancing exercise when setting the limit values, EU law cannot require Member States to take measures to comply with the limit values where the disadvantages of those measures outweigh the improvement in the protection of health and the environment resulting from the enforcement of the limit values. (25)

53. However, the statements in the judgment in *Janecek* are confined to the obligation to draw up action plans under Article 7(3) of Directive 96/62. Only those plans did not have to be designed to rule out any exceedance of the limit values. The obligation to comply with the limit values was already independent of that under Directives 96/62 and 1999/30. (26) As in the case of other infringements of EU law, (27) Member states could justify exceedances of the limit values only by means of concrete evidence of insurmountable difficulties or *force majeure*. (28)

(c) Interim conclusion

54. It must therefore be stated that Articles 7 and 8 of Directive 96/62, read in conjunction with the limit values for nitrogen dioxide and PM10 under Directive 1999/30, established a clear and unconditional obligation to comply with the limit values, which existed since 1 January 2005 in respect of PM10 and since 1 January 2010 in respect of nitrogen dioxide. However, under Article 7(3) of Directive 96/62, the Member States were required only to take measures to reduce the duration of the exceedance to a minimum on the basis of a balance between the conflicting interests. That second obligation is sufficiently clear only with regard to a breach of the limits of the discretion existing in that respect.

2. Clarity of the content of the rules of Directive 2008/50

55. Furthermore, it is necessary to assess the clarity of the content of the provisions of Directive 2008/50, which replaced Directives 96/62 and 1999/30 in 2008 with effect from 11 June 2010.

(a) Limit values

56. In accordance with the first sentence of Article 13(1) of Directive 2008/50, Member States are required to ensure that, throughout their zones and agglomerations, levels of various pollutants in ambient air, in particular PM10, do not exceed the limit values laid down in Annex XI. Moreover, in accordance with the second sentence of Article 13(1), in respect of nitrogen dioxide and benzene, the limit values specified in Annex XI may not be exceeded from the dates specified therein.

57. The different wording of the two sentences does not call into question the clarity of the obligation to comply with the limit values. That difference in wording can be explained by the fact that the limit values for the pollutants referred to in the first sentence of Article 13(1) of Directive 2008/50 had already applied since 2005, as is apparent from Annex XI, whereas the directive did not enter into force until 2008. By contrast, the limit values for nitrogen dioxide and benzene did not become mandatory until 2010, that is to say, after the directive entered into force.

58. Therefore, Member States must ensure that, throughout their zones and agglomerations, the levels of the pollutants covered by Article 13(1) of Directive 2008/50 do not exceed the limit values laid down in Annex XI. (29) Under point 1 of Section A of Annex III to Directive 2008/50, only certain places where people do not normally stay without protection do not need to be assessed in that respect. (30)

59. Therefore, viewed in isolation, Article 13(1) of and Annex XI to Directive 2008/50 appear to be sufficiently precise. (31) This is also demonstrated by the fact that the Court has repeatedly found that Member States have infringed that provision. (32)

(b) Air quality plans under Article 23 of Directive 2008/50

60. The obligation to comply with the limit values under Article 13(1) of Directive 2008/50 is accompanied by the obligation to improve air quality under Article 23(1).

61. In accordance with that provision, for zones or agglomerations in which the levels of pollutants in ambient air exceed any limit value or target value, plus any relevant margin of tolerance in each case, Member States are to ensure that air quality plans are established in order to achieve the limit value or target value specified in Annexes XI and XIV to Directive 2008/50. In the event of the exceedance of those limit values for which the attainment deadline is already expired, the air quality plans are to set out appropriate measures, so that the exceedance period can be kept as short as possible. Those air quality plans are to incorporate at least the information listed in Section A of Annex XV.

62. Article 23 of Directive 2008/50 therefore creates a direct link between exceedance of the limit values for PM10 which are provided for in Article 13(1) of that directive, in conjunction with Annex XI thereto, and the obligation to establish air quality plans. (33)

63. The Member States which are party to the proceedings therefore take the view that Directive 2008/50 does not require that any exceedance of the limit values be prevented, but only creates the obligation to establish air quality plans in Article 23(1). The Republic of Poland even argues that, in the light of Article 23(1), the obligation to comply with the limit values is not unconditional.

64. That position appears to be supported by the judgment in *Janecek*, already cited above, in which the Court held, in connection with Article 7(3) of Directive 96/62, that Member States are not required to prevent any exceedance of the limit values. (34) Moreover, similarly to the previous legislation, air quality plans under Article 23 of Directive 2008/50 may be adopted only on the basis of the balance between the aim of minimising the risk of pollution and the various opposing public and private interests. (35)

65. However, whether measures to improve ambient air quality are sufficient to justify an infringement of the limit values was already questionable in connection with Directives 96/62 and 1999/30. (36) Furthermore, in relation to Directive 2008/50, the Court has now repeatedly rejected the view that a Member State has entirely satisfied its obligations under Article 13(1) merely because it has established an air quality plan. (37)

66. According to a recent judgment of the Grand Chamber, such an interpretation would leave the achievement of the objective of protection of human health, referred to in Article 1(1) of Directive 2008/50, to the sole discretion of the Member States, which is contrary to the intentions of the EU legislature. The Court derives that from, in particular, the definition of the concept of ‘limit value’ in Article 2(5), requiring that compliance therewith be guaranteed within a given period and subsequently maintained. (38)

67. Furthermore, compared with Directive 96/62, Directive 2008/50 clarified the obligation to comply with limit values by means of a provision that would be undermined if, in addition, merely establishing air quality plans were already sufficient to justify an exceedance. (39) Article 22 of Directive 2008/50 allows the deadlines for compliance with the limit values to be postponed by a maximum of five years for nitrogen dioxide or benzene and a maximum of six years for PM10. The postponement of a deadline requires, in particular, that Member States establish air quality plans to ensure compliance with that postponed deadline. Air quality plans under Article 23(1), on the other hand, are not subject to that deadline.

(c) Interim conclusion

68. Article 13(1) of Directive 2008/50 therefore establishes a precisely defined, directly effective obligation on the part of the Member States to prevent exceedance of the limit values for the air pollutants covered.

69. In addition, Article 23(1) of Directive 2008/50 imposes a clear *independent* obligation to establish air quality plans, which is triggered by the infringement of limit values. (40)

70. It is true that the Republic of Poland takes the view that Article 23(1) of Directive 2008/50 is not sufficiently precise with regard to the content of the air quality plans. According to the Republic of Poland, that provision does not set a fixed time limit for bringing an end to the exceedance, but only requires that the period of non-compliance be kept as short as possible. Furthermore, submits the Republic of Poland, the establishment of the measures requires a balancing of the opposing interests, as also emphasised by the French Republic and Ireland.

71. However, in response to that, it must be stated that it is true that the discretion associated with the balancing of interests may be relevant to the question as to whether an infringement is serious, (41) and may also play a role in the assessment of causality. (42) However, it is not a decisive factor in determining whether the provision in question is sufficiently precise to confer rights on individuals. Rather, it is sufficient that compliance with the limits on the exercise of that discretion may be relied upon by individuals before the national courts. (43)

3. Purpose of the limit values and the obligation to improve ambient air quality

72. Whether the limit values and the obligation to improve ambient air quality under Directives 96/62, 1999/30 and 2008/50 are intended to confer rights on those who suffer damage to their health as a result of air pollution depends not only on the identifiability of potential rights but, above all, on the objectives of that legislation. (44)

73. In accordance with the second recital of Directive 96/62, recital 2 of Directive 2008/58 and Article 1(1) of both directives, those directives aim to avoid, prevent or reduce harmful effects on human health. (45) The rules on ambient air quality laid down in those directives thus put into concrete terms the EU's obligations concerning environmental protection and the protection of public health, which stem, inter alia, from Article 3(3) TEU and Article 191(1) and (2) TFEU. According to those provisions, Union policy on the environment is to aim at a high level of protection, taking into account the diversity of situations in the various regions, and is to be based, inter alia, on the precautionary principle and on the principle that preventive action should be taken. (46) That obligation of protection also follows from Articles 2, 3 and 37 of the Charter of Fundamental Rights of the European Union. (47)

74. The fact that the limit values for, in particular, PM10 and nitrogen dioxide serve to protect human health already follows from their designation as limit values for the protection of human health in Annexes II and III to Directive 1999/30 and in Article 13 of and Annex XI to Directive 2008/50. The definition of the concept of 'limit value' in Article 2(5) of both Directive 96/62 and Directive 2008/50, which was emphasised by the applicant, also provides that a limit value is fixed with the aim of avoiding, preventing or reducing harmful effects on human health and/or the environment as a whole.

75. Since the respective obligations to improve ambient air quality are triggered by exceedance of those limit values, those obligations are also indisputably aimed at protecting health.

76. As the Commission rightly underlines, the Court, on the basis of that premiss of protection, has already held with regard to the older directives on the protection of ambient air quality that individuals must be in a position to rely on the mandatory rules of those directives as *rights*. (48) Building on that, it made it possible to invoke Directives 96/62 and 2008/50 (49) and has also referred to the judicial protection of *rights* in that connection. (50)

77. Although the Republic of Poland and Ireland take the view that the objective of health protection is intended to relate solely to the protection of the general public, that view is not convincing. Particularly the interest in health is highly personal and thus individual in nature and forms the basis of the case-law outlined just above.

78. The situation could be different for rules of environmental law, which serve primarily to protect animals, plants and habitats and benefit humans only indirectly. In that respect, one might think of the critical levels for the protection of vegetation under Article 14 of and Annex XIII to Directive 2008/50. However, whether those provisions are intended to confer rights on individuals need not be decided in the present case.

79. Contrary to the view taken by Ireland, the polluter-pays principle also does not militate against recognising State liability for damage caused to health as a result of infringement of rules on ambient air quality.

80. It is true that the polluter-pays principle is a principle of Union policy on the environment referred to in Article 191(2) TFEU and must therefore also be observed when interpreting rules on ambient air quality. It is also true that, according to that principle, it is the air polluters who should primarily bear the costs, which is expressed even more clearly in other language versions than in the German '*Verursacherprinzip*', with for example the English version using the wording 'that the polluter should pay' or the French version the wording '*principe du pollueur-payeur*'.

81. However, that principle cannot release Member States from their own responsibility if they allow, or fail to prevent, air pollution in breach of EU law. Moreover, the fact that the rules on ambient air quality impose that responsibility on Member States is justified because ambient air pollution generally results from various sources, with the result that the Member States must decide the extent to which certain polluters must reduce their emissions.

4. The judgment in Paul and Others

82. The importance of those considerations regarding the purpose of the rules on ambient air quality becomes particularly clear when compared with the judgment of 12 October 2004, *Paul and Others* (C-222/02, EU:C:2004:606). That is the only judgment in which the Court has rejected a claim for compensation on the grounds that the rules in question were *not* intended to confer rights on individuals.

83. The judgment concerned banking supervision obligations applicable at the time, which also served to protect depositors. (51) Those rules have distinct parallels with the protection of ambient air quality. Both tasks – banking supervision and the protection of ambient air quality – are characterised by a high degree of complexity, (52) and rights of individuals are not expressly mentioned, (53) as emphasised by the French Republic in the present case.

84. However, the banking supervision rules applicable at the time differed from the protection of ambient air quality in significant respects. Those differences are not due exclusively to the different subject matter of the respective rules.

85. This is because the deposit-guarantee scheme (54) provided a special protection scheme for depositors, which militated against conferring more extensive rights to compensation on the depositors. (55) By contrast, no such specific scheme is apparent with regard to damage to health due to air pollution.

86. Above all, however, the main purpose of the banking supervision rules in force at that time was to secure the mutual recognition of authorisations and of prudential supervision systems. This made it possible to grant a single licence recognised throughout the European Union and to apply the principle of home Member State prudential supervision. (56) The banking supervision rules were therefore intended, in accordance with their legal basis, to achieve the freedom of establishment of banks through the

harmonisation of the national requirements. State liability in favour of depositors, which was not provided for or was even excluded under national law, was not necessary for that. (57)

87. By contrast, the rules on the protection of ambient air quality were based on the EU's environmental competence and therefore, in accordance with Article 191 TFEU, necessarily aim at a high level of protection with regard to human health. It is precisely that protection that is the main purpose, whereas objectives relating to the internal market play a marginal and indirect role at best.

5. No rule on financial claims

88. However, the French Republic's objection can also be understood to mean that entitlement to compensation requires the infringement of a rule that provides for rights of individuals to payments or economic benefits. The rules on ambient air quality do not do so.

89. In fact, previous decisions establishing State liability for infringements of EU law have often related to the safeguarding of financial claims, such as the safeguarding of wages and old-age pensions in the event of the employer's insolvency (58) or the claims of package travellers in the event of the bankruptcy of the travel undertaking, (59) deposit protection (60) and the protection of investors against excessive prices in the event of takeovers, (61) or the entitlement to compensation of victims of crime. (62)

90. The Court's statements according to which an infringement of the rule in question directly affects the legal situation ('*situation juridique*') of the injured party appear to follow along the same lines. (63) That situation related to legally protected asset-related interests in connection with guaranteed deposits and the protection of investors.

91. By contrast, the failure of a Member State to ensure compliance with the limit values would not be described as a change in the legal situation of those who experience adverse health effects as a result of that failure. Rather, that failure infringes a legal interest which is much more important than the abovementioned asset-related interests. This is because everyone has the right to respect for his or her physical and mental integrity, which is laid down in Article 3 of the Charter of Fundamental Rights and is ranked in first position in relation to the other legal interests. (64)

92. However, even irrespective of the impact on the legal situations of injured parties, it must be emphasised that the case-law on State liability is not based on the protection of financial interests of the persons concerned, but is intended to ensure the full effectiveness of EU law by protecting the rights that it confers on individuals. (65) Therefore, the principle of State liability for loss or damage caused to individuals as a result of breaches of EU law for which the State can be held responsible is inherent in the system of the treaties on which the European Union is based. (66)

93. In line with that objective, the Court has also recognised that the purpose of the EIA Directive (67) is to confer rights on individuals, (68) although claims for compensation are generally likely to fail in the absence of a direct causal link. (69)

94. Moreover, adverse effects on health are also associated with financial losses, for example treatment costs or loss of earnings. Accordingly, in its proposal for Directive 2008/50, the Commission emphasised not only the health consequences of air pollution, but also the estimated financial damage of EUR 189 to 609 thousand million per annum as at 2020. (70) Such damage, at the least, is covered by the protective purpose of the rules on the protection of ambient air quality.

6. Group of beneficiaries

95. That notwithstanding, did the EU really intend to confer on a scarcely delimitable group of persons potentially affected a right to a certain quality of ambient air, infringement of which could give rise to entitlement to compensation?

96. The Court has since found, in 12 infringement cases, that 10 Member States failed to meet ambient air quality standards. (71) The nine most recent judgments even found a systematic and persistent infringement of the standards. Seven cases, concerning inter alia three other Member States, are currently still pending. (72) Air quality standards have also been the subject of disputes before national courts in – at the least – Belgium, (73) Germany, (74) France (75) and the United Kingdom. (76)

97. Therefore, Member States would have to expect a large number of claims for compensation for infringements of air quality standards if those standards were to confer such rights. Quite apart from the ensuing financial risks, disputes concerning such claims could place a considerable burden on the courts of the Member States.

98. However, those considerations do not militate against the recognition of rights that can establish entitlement to compensation, because the large number of persons potentially affected shows, above all, the importance of adequate air quality.

99. The expense associated with claims for compensation is also not manifestly disproportionate to the weight of that problem. The limit values for ambient air quality do not relate to minor nuisances, but rather to significant adverse effects on health that can go as far as premature death. (77)

100. At the same time, the group of persons actually affected is not so large as to cover almost every inhabitant of the Member States affected, whereby the residents would have to compensate each other through taxes, so to speak. Exceedance of the limit values burdens, above all, certain groups who live or work in particularly polluted areas. (78) Those groups often consist of people of low socio-economic status, (79) who are particularly reliant on judicial protection.

101. For that reason also, (80) it is incorrect to assume, together with Ireland and the Republic of Poland, that the rules on ambient air quality serve exclusively to protect the general public. Although ambient air quality must be protected in general, the specific problems arise in specific places and affect specific, identifiable groups of people. Therefore, only persons who are directly concerned by an exceedance of the limit values or the risk of an exceedance can rely on Article 23(1) of Directive 2008/50. (81)

102. In line with the considerations set out just above, the Court, in connection with the enforcement of rules on ambient air quality, has already alluded to the possibility of entitlement to compensation under EU law. (82)

7. Answer to the first question

103. In summary, the limit values for pollutants in ambient air and the obligations to improve ambient air quality under Articles 7 and 8 of Directive 96/62, in conjunction with Directive 1999/30, and under Articles 13 and 23 of Directive 2008/50 are intended to confer rights on individuals.

B. Second question – further requirements for entitlement to compensation

104. The second question seeks to ascertain the conditions to which entitlement to compensation for damage to health is subject. Of particular interest to the referring court in that respect is the date on which the existence of the breach of the rules on the protection of air quality must be assessed.

105. In that connection, the other two conditions of entitlement to compensation must be recalled: the breach must be sufficiently serious (see section 1) and there must be a direct causal link between that breach and the damage (see section 2). (83)

1. Sufficiently serious infringement

106. In order to determine whether a sufficiently serious infringement of EU law has occurred, the national court before which a claim for compensation has been brought must take account of all the factors which

characterise the situation brought before it. Those factors include the clarity and precision of the rule infringed, the measure of discretion left by that rule to the authorities, whether the infringement or the damage caused was intentional or involuntary, whether any error of law was excusable or inexcusable, and the fact that the position taken by an EU institution may have contributed towards the adoption or maintenance of national measures or practices contrary to EU law. (84)

107. It also follows from the case-law that a breach of EU law will clearly be sufficiently serious if it has persisted despite a judgment finding the breach in question to be established, or despite a preliminary ruling or settled case-law of the Court on the matter from which it is clear that the conduct in question constituted a breach. (85)

(a) Exceedance of the limit values as a serious infringement

108. The obligation to comply with the limit values for PM10 (since 2005) and nitrogen dioxide (since 2010) – which arose initially from Article 7(1) of Directive 96/62 and Article 4, in conjunction with Annex II, and Article 5, in conjunction with Annex III, Section I, Stage 1, of Directive 1999/30 and, as of 11 June 2010, from Article 13(1) of and Annex XI to Directive 2008/50 – is unambiguous and leaves no discretion to the Member States. It might be inferred from that that such an infringement was serious by its very nature.

109. However, in the judgment in *Janecek*, concerning Directives 96/62 and 1999/30, the Court ruled that the Member States were not obliged to take measures to ensure that those limit values and/or alert thresholds are never exceeded. (86) Although the subsequent judgments concerning those directives suggest that exceedance of the limit values nevertheless constitutes an independent infringement of EU law, (87) Directive 2008/50 was already applicable at that time. Therefore, exceedance of the limit values during the period in which Directives 96/62 and 1999/30 were applicable alone could not be regarded as a serious infringement of EU law.

110. Nevertheless, the judgment in *Janecek* confirms the likewise clear and unconditional obligation to draw up action plans under Article 7(3) of Directive 96/62. (88) That obligation is closely linked to the exceedance of the limit values, as such exceedance does not occur or is at least minimised if the Member State has taken sufficient measures to reduce air pollution – whether before or during the period in which the limit values are applicable.

111. That connection is also clearly expressed in Directive 2008/50, because the obligation to draw up air quality plans under Article 23 is triggered by exceedance of the limit values under Article 13 and Annex XI.

112. I infer that, both under the previously applicable directives and under Directive 2008/50, an exceedance of the limit values for ambient air quality without a corresponding plan to remedy the exceedance constitutes a serious infringement of EU law which may establish entitlement to compensation.

(b) Quality of the plans

113. Contrary to the view taken by the Republic of Poland, however, the mere existence of a plan is not sufficient to exclude a serious infringement. Rather, as the Italian Republic submits, in order to exclude a serious infringement of the limit values, a plan must not have any manifest deficiencies.

114. In that respect, it is first necessary to determine whether the competent authorities respected the requirements in Section A of Annex XV to Directive 2008/50 or Annex IV to Directive 96/62. Only if a plan is linked to the information provided for therein can it be assessed whether it is at all capable of bringing an end to the exceedance, or by when the exceedance is to be brought to an end. (89)

115. However, even if all formal requirements have been complied with, an infringement of the limit values may be sufficiently serious if the plan manifestly does not meet the substantive requirements because the competent bodies have breached the limits of their discretion. (90) Such deficiencies may reside, in particular, in the fact that the expected duration of the exceedance is clearly not 'as short as possible' or in the fact that the remedies are demonstrably inappropriate. It is also conceivable that the plans might be based on obviously incorrectly positioned sampling points (91) or grossly incorrect modelling techniques, with the result that the actual extent to which the limit values are exceeded is not taken into account.

116. It is for the national courts to examine those requirements in the main proceedings. In so doing, they should take into account that the Commission, when considering deadline extensions under Article 22 of Directive 2008/50, has already rejected the plans submitted by the French Republic for, inter alia, the Paris agglomeration. (92) Moreover, the Court has already held that, between 11 June 2010 and 16 April 2017, the French Republic manifestly failed to adopt, in a timely manner, appropriate measures, inter alia for that agglomeration, to ensure that the period of exceedance of the limit values for nitrogen dioxide (93) and PM10 (94) can be kept as short as possible.

(c) Relevant period

117. The connection between a serious infringement of the limit values and the plan to eliminate the exceedance requires that periods of time to be taken into account in the assessment of the claim for compensation must be determined in the light of that plan. This is because any period during which a limit value has been exceeded without a sufficient plan is a period during which the Member State concerned has seriously infringed the air quality rules.

118. As regards the case in the main proceedings, that is to say, the Paris agglomeration, in the absence of a relevant postponement of the deadline in accordance with Article 22 of Directive 2008/50, the date of application of the respective limit values results from Annex XI, which corresponds to the previously applicable Directive 1999/30 in that respect. Thus, the limit values for PM10 have been applicable since 1 January 2005 and those for nitrogen dioxide since 1 January 2010.

119. By contrast, the obligation to draw up air quality plans under Article 23 of Directive 2008/50 did not come into being until the transposition deadline expired on 11 June 2010.

120. According to the third subparagraph of Article 23(1), those plans are to be communicated to the Commission without delay, but no later than two years after the end of the year the first exceedance was observed. Various Member States which are party to the proceedings infer from this that the obligation to draw up air quality plans did not become effective until that additional period had expired.

121. That view may be correct as regards exceedances of the limit values or target values plus any relevant margin of tolerance that occurred for the first time after the deadline for transposing Directive 2008/50 had expired.

122. By contrast, exceedances that already existed upon the expiry of the transposition deadline were subject to the previously applicable obligations under Article 7(3) and Article 8 of Directive 96/62, in conjunction with the limit values and margins of tolerance in Directive 1999/30. Those provisions established an obligation which is comparable to Article 23 of Directive 2008/50, but is even more extensive from a temporal point of view. (95) It already applied in the period prior to the application of the limit values, as soon as those values plus the associated margins of tolerance had been exceeded.

123. Article 11(1)(a)(iii) of Directive 96/62 also provided a time limit of two years for the submission of those plans. However, those plans had to ensure that the limit values were respected on the date on which they became applicable and therefore already effective at that date.

124. Consequently, Member States were already required to have drawn up the respective necessary plans if limit values were exceeded before the deadline for transposing Directive 2008/50. It appears as though that is the situation in the case in the main proceedings, as the French Republic had unsuccessfully applied to the Commission for postponements of the deadlines for PM10 and nitrogen dioxide for the Paris agglomeration, (96) and therefore assumed that the limit values had been exceeded. However, that would have to be reviewed by the national court.

(d) Interim conclusion

125. A serious infringement of the rules on the protection of ambient air quality as regards PM10 or nitrogen dioxide laid down in Articles 7 and 8 of Directive 96/62, Directive 1999/30 and Articles 13 and 23 of Directive 2008/50 in the event of an exceedance of the limit values at the end of the time limit for their implementation covers all periods in which the respective applicable limit values were exceeded without there having been an air quality improvement plan which satisfied the requirements of Annex IV to Directive 96/62 or Section A of Annex XV to Directive 2008/50 and which also did not contain any manifest defects in other respects.

2. Direct causal link

126. The actual difficulties in enforcing claims for compensation lie in proving a direct causal link between the serious infringement of air quality rules and concrete damage to health.

127. The obligation for injured individuals to establish to the requisite legal standard the extent of the damage suffered as a result of a breach of EU law constitutes, in principle, a condition for the State's liability for such damage. (97)

128. It is for the national courts to determine the exact standard of proof. They must ascertain whether the loss and damage claimed flows sufficiently directly from the breach of EU law by the Member State; (98) in so doing, however, they must observe the principles of equivalence and effectiveness. (99) The Court may, in order to give the national court a useful answer, provide it with all the guidance that it deems necessary. (100)

129. An act or – in the case of inadequate measures to improve ambient air quality – omission is the cause of damage only where such damage can be attributed directly to such an act. The requisite causal link does not exist where the damage would also have occurred in the absence of the relevant act or omission. (101)

130. It is true that the limit values for PM10 and nitrogen dioxide are based on the assumption of significant damage, in particular premature deaths, due to air pollution. (102) However, that does not prove that the suffering of certain people is due to exceedances of the limit values and to deficient air quality plans. This is because such suffering can also be caused by other factors, such as predisposition or personal behaviour, such as smoking. Since the World Health Organisation now recommends stricter limit values, (103) it also cannot be ruled out that the air is sufficiently polluted to cause such illnesses despite compliance with Directive 2008/50.

131. Therefore, in order to prove a direct causal link, the injured party must *first* prove that he or she has stayed, for a sufficiently long period of time, in an environment in which limit values for ambient air quality under EU law have been seriously infringed. The duration of that period is a medical question that requires a scientific answer.

132. Such a stay should in any event be able to result in particular from the workplace or the home, but also from other places where the person concerned has frequently stayed for a relatively long period of time.

133. However, it is not sufficient to have stayed in an agglomeration or zone in which the limit values were exceeded at one or more sampling points. This is because certain sampling points are to be

established in such a way that they provide information on the pollution of the most polluted locations. (104) Therefore, even in such agglomerations or zones, there will be many places where the air is less polluted and meets the standards of EU law.

134. Therefore, the injured party must specifically prove that the limit values were exceeded at the claimed place where he or she stayed and during the claimed periods. However, if there was no sampling point at the place in question, it must be possible to determine the extent of pollution using modelling techniques, because Member States are also able to make use of that tool. (105) Accordingly, the European Environment Agency takes the view that the portion of the urban population living within 100 metres of major roads is exposed to excessive levels of pollutants if the limit values are exceeded in the agglomeration concerned. (106)

135. *Second*, anyone seeking compensation for air pollution must prove the existence of damage that can be linked to the relevant air pollution in the first place.

136. And *third*, the injured party must prove a direct causal link between the abovementioned stay at a place where a limit value for ambient air quality was seriously infringed and the damage claimed.

137. This will generally require medical reports, which will certainly also have to take into account the scientific basis on which the limit values were set and the recommendations of the World Health Organisation, which are even stricter in some cases.

138. It would be conceivable for that burden of proof to be reduced by way of a rebuttable presumption that a typical type of damage to health is attributable to a sufficiently long stay in an environment in which a limit value has been exceeded. Accordingly, in the case of apparently much more serious air pollution, the ECtHR has derived a presumption of harm from an exceedance of limit values and other strong indications. (107) In order to bring about such a reduction of the burden of proof, the injured party could invoke the principle of effectiveness where the full standard of proof, beyond any reasonable doubt, would make it excessively difficult to obtain compensation.

139. However, I do not consider it appropriate for the Court to decide in the present case whether such a presumption arises from EU law and, in particular, the rules on ambient air quality. Neither the request for a preliminary ruling nor the parties to the proceedings have raised that question. However, the acceptance of such a presumption would require an intensive discussion of the scientific basis for establishing a causal link between air pollution and damage to health.

140. In addition, some of the parties emphasise that the applicant complained of adverse effects to his health as early as in 2003, that is to say, before the limit value for PM10 became applicable. However, that does not rule out the possibility that he has suffered additional damage resulting from air pollution – whether because his condition has worsened or because healing has been prevented or delayed. An infringement of the limit values would be expected to have such effects in any case, because air pollution often amplifies the effects of existing health problems. (108) That question is also of a scientific nature and must be examined by the national court in each individual case.

141. Lastly, it is important to note that even if a direct link between a serious infringement of the limit values and damage to health were proven, the matter would not end there. Rather, the Member State may exonerate itself by proving that such exceedances would also have occurred if it had adopted in good time air quality plans that met the requirements of the directive.

3. Answer to the second question

142. In summary, entitlement to compensation for adverse effects to health resulting from an established exceedance of the limit values for PM10 or nitrogen dioxide in the ambient air following the end of the relevant time limit laid down in Articles 7 and 8 of Directive 96/62, in conjunction with Directive 1999/30, or Article 13 of Directive 2008/50 requires that the injured party proves a direct link between that adverse

effect and his or her stay at a place where the respective applicable limit values were exceeded without there having been an air quality improvement plan which satisfied the requirements of Annex IV to Directive 96/62 or Section A of Annex XV to Directive 2008/50 and which also did not contain any manifest defects in other respects.

V. Conclusion

143. I therefore propose that the Court give the following answer to the request for a preliminary ruling:

(1) The limit values for pollutants in ambient air and the obligations to improve ambient air quality under Articles 7 and 8 of Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management, in conjunction with Council Directive 1999/30/EC of 22 April 1999 relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air, and under Articles 13 and 23 of 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 are intended to confer rights on individuals.

(2) Entitlement to compensation for adverse effects to health resulting from an established exceedance of the limit values for PM10 or nitrogen dioxide in the ambient air following the end of the relevant time limit laid down in Articles 7 and 8 of Directive 96/62, in conjunction with Directive 1999/30, or Article 13 of Directive 2008/50 requires that the injured party proves a direct link between that adverse effect and his or her stay at a place where the respective applicable limit values were exceeded without there having been an air quality improvement plan which satisfied the requirements of Annex IV to Directive 96/62 or Section A of Annex XV to Directive 2008/50 and which also did not contain any manifest defects in other respects.

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1 Original language: German.

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2 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), as amended by Commission Directive (EU) 2015/1480 of 28 August 2015 (OJ 2015 L 226, p. 4) (‘Directive 2008/50’).

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3 In addition to the judgments concerning the applicant’s place of residence, namely judgments of 24 October 2019, *Commission* v *France (Exceedance of limit values for nitrogen dioxide)* (C-636/18, EU:C:2019:900), and of 28 April 2022, *Commission* v *France (Limit values – PM10)* (C-286/21, not published, EU:C:2022:319), see, for example, judgments of 5 April 2017, *Commission* v *Bulgaria* (C-488/15, EU:C:2017:267); of 30 April 2020, *Commission* v *Romania (Exceedance of the limit values for PM10)* (C-638/18, not published, EU:C:2020:334); of 10 November 2020, *Commission* v *Italy (Limit values – PM10)* (C-644/18, EU:C:2020:895); of 3 February 2021, *Commission* v *Hungary (Limit values – PM10)* (C-637/18, not published, EU:C:2021:92); and of 3 June 2021, *Commission* v *Germany (Limit values – NO2)* (C-635/18, not published, EU:C:2021:437).

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4 https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12677-Air-quality-revision-of-EU-rules_en, visited on 25 February 2022.

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5 Case C-375/21, *Sdruzhenie ‘Za Zemyata – dostap do pravosadie’ and Others* (OJ 2021 C 401, p. 2).

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6 Case C-174/21, *Commission* v *Bulgaria* (OJ 2021 C 206, p. 18).

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7 Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management (OJ 1996 L 296, p. 55).

8 Council Directive 1999/30/EC of 22 April 1999 relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air (OJ 1999 L 163, p. 41).

9 Air Quality – Time extensions (https://ec.europa.eu/environment/air/quality/time_extensions.htm, visited on 21 February 2022).

10 See, in particular, recitals 21, 25 and 32 of Decision C(2009) 5244 final of 2 July 2009, recitals 10, 14 to 16, 19 and 30 of Decision C(2010) 9168 final of 17 December 2010, both concerning PM10, and Article 1 of Decision C(2013) 920 final of 22 February 2013, concerning nitrogen dioxide.

11 Judgment of 24 October 2019, *Commission* v *France (Exceedance of limit values for nitrogen dioxide)* (C-636/18, EU:C:2019:900).

12 Judgment of 28 April 2022, *Commission* v *France (Limit values – PM10)* (C-286/21, not published, EU:C:2022:319).

13 Judgment of the Conseil d'État (Council of State) of 4 August 2021, Association les Amis de la Terre France et autres (428409, FR:CECHR:2021:428409.20210804, points 4 and 5).

14 Judgment of 19 December 2019, *Deutsche Umwelthilfe* (C-752/18, EU:C:2019:1114, paragraphs 54 and 55).

15 Judgments of 19 November 1991, *Francovich and Others* (C-6/90 and C-9/90, EU:C:1991:428, paragraph 33); of 14 March 2013, *Leth* (C-420/11, EU:C:2013:166, paragraph 40); of 24 June 2019, *Popławski* (C-573/17, EU:C:2019:530, paragraph 56); and of 19 December 2019, *Deutsche Umwelthilfe* (C-752/18, EU:C:2019:1114, paragraph 54).

16 Judgments of 5 March 1996, *Brasserie du pêcheur and Factortame* (C-46/93 and C-48/93, EU:C:1996:79, paragraph 51); of 24 March 2009, *Danske Slagterier* (C-445/06, EU:C:2009:178, paragraph 20); and of 10 December 2020, *Euromin Holdings (Cyprus)* (C-735/19, EU:C:2020:1014, paragraph 79).

17 Judgments of 19 November 1991, *Francovich and Others* (C-6/90 and C-9/90, EU:C:1991:428, paragraph 40); of 5 March 1996, *Brasserie du pêcheur and Factortame* (C-46/93 and C-48/93, EU:C:1996:79, paragraph 51); of 14 March 2013, *Leth* (C-420/11, EU:C:2013:166, paragraph 41); and of 16 July 2020, *Presidenza del Consiglio dei Ministri* (C-129/19, EU:C:2020:566, paragraph 34).

18 Judgments of 5 March 1996, *Brasserie du pêcheur and Factortame* (C-46/93 and C-48/93, EU:C:1996:79, paragraphs 21 and 22), and of 10 December 2020, *Euromin Holdings (Cyprus)* (C-735/19, EU:C:2020:1014, paragraph 81).

19 See judgments of 24 March 2009, *Danske Slagterier* (C-445/06, EU:C:2009:178, paragraphs 22 to 26); of 25 November 2010, *Fuß* (C-429/09, EU:C:2010:717, paragraphs 49 and 50); and of 25 March 2021, *Balgarska Narodna Banka* (C-501/18, EU:C:2021:249, paragraphs 63 and 86).

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20 Judgments of 19 November 1991, *Francovich and Others* (C-6/90 and C-9/90, EU:C:1991:428, paragraph 40); of 4 July 2006, *Adeneler and Others* (C-212/04, EU:C:2006:443, paragraph 112); and of 24 January 2018, *Pantuso and Others* (C-616/16 and C-617/16, EU:C:2018:32, paragraph 49).

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21 See judgments of 10 May 2011, *Commission* v *Sweden* (C-479/10, not published, EU:C:2011:287); of 15 November 2012, *Commission* v *Portugal* (C-34/11, EU:C:2012:712); and of 19 December 2012, *Commission* v *Italy* (C-68/11, EU:C:2012:815).

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22 Accordingly, the 2003 annual report (questionnaire) for France (https://cdr.eionet.europa.eu/fr/eu/annualair/envqwuzxq/, visited on 24 February 2022) shows that the annual limit value, plus margin of tolerance, for nitrogen dioxide (Table 8b, line 14) and the daily limit value, plus margin of tolerance, for PM10 (Table 8c, line 14) were exceeded in the Paris agglomeration.

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23 Judgment of 25 July 2008, *Janecek* (C-237/07, EU:C:2008:447; 'the judgment in *Janecek*'; paragraphs 44 to 46).

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24 Communication from the Commission on notifications of postponements of attainment deadlines and exemptions from the obligation to apply certain limit values pursuant to Article 22 of Directive 2008/50/EC on ambient air quality and cleaner air for Europe (COM(2008) 403 final, p. 2).

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25 See my Opinion in *Commission* v *Bulgaria* (C-488/15, EU:C:2016:862, points 95 to 98).

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26 See judgments of 10 May 2011, *Commission* v *Sweden* (C-479/10, not published, EU:C:2011:287); of 15 November 2012, *Commission* v *Portugal* (C-34/11, EU:C:2012:712); and of 19 December 2012, *Commission* v *Italy* (C-68/11, EU:C:2012:815).

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27 Judgments of 11 July 1985, *Commission* v *Italy* (101/84, EU:C:1985:330, paragraph 16); of 9 December 1997, *Commission* v *France* (C-265/95, EU:C:1997:595, paragraphs 55 and 56); and of 13 December 2001, *Commission* v *France* (C-1/00, EU:C:2001:687, paragraph 131).

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28 Judgment of 19 December 2012, *Commission* v *Italy* (C-68/11, EU:C:2012:815, paragraphs 64 and 65).

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29 Judgment of 26 June 2019, *Craeynest and Others* (C-723/17, EU:C:2019:533, paragraph 48). See also, in that regard, the judgments cited below in footnote 32.

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30 See my Opinion in *Craeynest and Others* (C-723/17, EU:C:2019:168, point 78).

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31 See judgments of 5 April 1979, *Ratti* (148/78, EU:C:1979:110, paragraph 23), and of 4 October 2018, *Link Logistik N&N* (C-384/17, EU:C:2018:810, paragraph 49).

32 Judgments of 5 April 2017, *Commission* v *Bulgaria* (C-488/15, EU:C:2017:267); of 22 February 2018, *Commission* v *Poland* (C-336/16, EU:C:2018:94); of 24 October 2019, *Commission* v *France (Exceedance of limit values for nitrogen dioxide)* (C-636/18, EU:C:2019:900); of 30 April 2020, *Commission* v *Romania (Exceedance of the limit values for PM10)* (C-638/18, not published, EU:C:2020:334); of 10 November 2020, *Commission* v *Italy (Limit values – PM10)* (C-644/18, EU:C:2020:895); of 3 February 2021, *Commission* v *Hungary (Limit values – PM10)* (C-637/18, not published, EU:C:2021:92); of 4 March 2021, *Commission* v *United Kingdom (Limit values – NO2)* (C-664/18, not published, EU:C:2021:171); of 3 June 2021, *Commission* v *Germany (Limit values – NO2)* (C-635/18, not published, EU:C:2021:437); and of 28 April 2022, *Commission* v *France (Limit values – PM10)* (C-286/21, not published, EU:C:2022:319).

33 Judgments of 5 April 2017, *Commission* v *Bulgaria* (C-488/15, EU:C:2017:267, paragraph 83); of 24 October 2019, *Commission* v *France (Exceedance of limit values for nitrogen dioxide)* (C-636/18, EU:C:2019:900, paragraph 78); and of 10 November 2020, *Commission* v *Italy (Limit values – PM10)* (C-644/18, EU:C:2020:895, paragraph 133).

34 Judgment of 25 July 2008, *Janecek* (C-237/07, EU:C:2008:447, paragraph 44).

35 Judgments of 5 April 2017, *Commission* v *Bulgaria* (C-488/15, EU:C:2017:267, paragraphs 105 and 106); of 24 October 2019, *Commission* v *France (Exceedance of limit values for nitrogen dioxide)* (C-636/18, EU:C:2019:900, paragraph 79); and of 10 November 2020, *Commission* v *Italy (Limit values – PM10)* (C-644/18, EU:C:2020:895, paragraph 134).

36 See point 53 above.

37 Judgments of 19 November 2014, *ClientEarth* (C-404/13, EU:C:2014:2382, paragraph 42); of 5 April 2017, *Commission* v *Bulgaria* (C-488/15, EU:C:2017:267, paragraph 70); and of 10 November 2020, *Commission* v *Italy (Limit values – PM10)* (C-644/18, EU:C:2020:895, paragraphs 78 to 81).

38 Judgment of 10 November 2020, *Commission* v *Italy (Limit values – PM10)* (C-644/18, EU:C:2020:895, paragraph 80).

39 Judgments of 19 November 2014, *ClientEarth* (C-404/13, EU:C:2014:2382, paragraphs 43 to 47), and of 10 November 2020, *Commission* v *Italy (Limit values – PM10)* (C-644/18, EU:C:2020:895, paragraph 81).

40 Judgments of 25 July 2008, *Janecek* (C-237/07, EU:C:2008:447, paragraph 35), and of 19 November 2014, *ClientEarth* (C-404/13, EU:C:2014:2382, paragraph 53).

41 Judgments of 25 January 2007, *Robins and Others* (C-278/05, EU:C:2007:56, paragraph 72); of 25 April 2013, *Hogan and Others* (C-398/11, EU:C:2013:272, paragraphs 50 to 52); and, specifically in relation to Directive 2008/50, my Opinion in *Commission* v *Bulgaria* (C-488/15, EU:C:2016:862, point 76). See also point 106 et seq. below.

42 See in this respect below point 126 et seq.

43 Judgments of 25 July 2008, *Janecek* (C-237/07, EU:C:2008:447, paragraph 46), and of 5 April 2017, *Commission* v *Bulgaria* (C-488/15, EU:C:2017:267, paragraph 105). See also judgments of 24 October 1996, *Kraaijeveld and Others* (C-72/95, EU:C:1996:404, paragraph 59); of 26 June 2019, *Craeynest and Others* (C-723/17, EU:C:2019:533, paragraphs 34 and 45); and of 3 October 2019, *Wasserleitungsverband Nördliches Burgenland and Others* (C-197/18, EU:C:2019:824, paragraphs 31 and 72).

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44 Judgments of 8 October 1996, *Dillenkofer and Others* (C-178/94, C-179/94 and C-188/94 to C-190/94, EU:C:1996:375, paragraph 33 et seq.); of 4 October 2018, *Kantarev* (C-571/16, EU:C:2018:807, paragraph 102); and of 10 December 2020, *Euromin Holdings (Cyprus)* (C-735/19, EU:C:2020:1014, paragraphs 88 and 89).

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45 See judgment of 26 June 2019, *Craeynest and Others* (C-723/17, EU:C:2019:533, paragraph 67).

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46 Judgment of 26 June 2019, *Craeynest and Others* (C-723/17, EU:C:2019:533, paragraph 33).

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47 See my Opinion in *Craeynest and Others* (C-723/17, EU:C:2019:168, point 53).

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48 Judgments of 30 May 1991, *Commission* v *Germany* (C-361/88, EU:C:1991:224, paragraph 16), and of 30 May 1991, *Commission* v *Germany* (C-59/89, EU:C:1991:225, paragraph 19). See also judgment of 17 October 1991, *Commission* v *Germany* (C-58/89, EU:C:1991:391, paragraph 14).

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49 Judgments of 25 July 2008, *Janecek* (C-237/07, EU:C:2008:447, paragraphs 37 and 38); of 19 November 2014, *ClientEarth* (C-404/13, EU:C:2014:2382, paragraph 54); of 26 June 2019, *Craeynest and Others* (C-723/17, EU:C:2019:533, paragraphs 53 and 54); and of 19 December 2019, *Deutsche Umwelthilfe* (C-752/18, EU:C:2019:1114, paragraph 38).

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50 Judgments of 19 November 2014, *ClientEarth* (C-404/13, EU:C:2014:2382, paragraph 52); of 26 June 2019, *Craeynest and Others* (C-723/17, EU:C:2019:533, paragraphs 31 and 54); and of 19 December 2019, *Deutsche Umwelthilfe* (C-752/18, EU:C:2019:1114, paragraphs 33, 39 and 54).

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51 See judgment of 12 October 2004, *Paul and Others* (C-222/02, EU:C:2004:606, paragraph 38).

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52 See judgment of 12 October 2004, *Paul and Others* (C-222/02, EU:C:2004:606, paragraph 44).

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53 See judgment of 12 October 2004, *Paul and Others* (C-222/02, EU:C:2004:606, paragraph 41).

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54 Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes (OJ 1994 L 135, p. 5).

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55 Judgment of 12 October 2004, *Paul and Others* (C-222/02, EU:C:2004:606, paragraph 45).

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56 Judgment of 12 October 2004, *Paul and Others* (C-222/02, EU:C:2004:606, paragraph 42).

57 Judgment of 12 October 2004, *Paul and Others* (C-222/02, EU:C:2004:606, paragraph 43).

58 Judgments of 19 November 1991, *Francovich and Others* (C-6/90 and C-9/90, EU:C:1991:428); of 25 January 2007, *Robins and Others* (C-278/05, EU:C:2007:56); and of 25 April 2013, *Hogan and Others* (C-398/11, EU:C:2013:272, paragraphs 50 to 52).

59 Judgment of 8 October 1996, *Dillenkofer and Others* (C-178/94, C-179/94 and C-188/94 to C-190/94, EU:C:1996:375, paragraph 33 et seq.).

60 Judgments of 4 October 2018, *Kantarev* (C-571/16, EU:C:2018:807), and of 25 March 2021, *Balgarska Narodna Banka* (C-501/18, EU:C:2021:249).

61 Judgment of 10 December 2020, *Euromin Holdings (Cyprus)* (C-735/19, EU:C:2020:1014).

62 Judgment of 16 July 2020, *Presidenza del Consiglio dei Ministri* (C-129/19, EU:C:2020:566).

63 Judgments of 4 October 2018, *Kantarev* (C-571/16, EU:C:2018:807, paragraph 103), and of 10 December 2020, *Euromin Holdings (Cyprus)* (C-735/19, EU:C:2020:1014, paragraph 90).

64 See, to that effect, judgments of 20 May 1976, *De Peijper* (104/75, EU:C:1976:67, paragraph 15); of 5 June 2007, *Rosengren and Others* (C-170/04, EU:C:2007:313, paragraph 39); of 1 June 2010, *Blanco Pérez and Chao Gómez* (C-570/07 and C-571/07, EU:C:2010:300, paragraph 44); and of 25 November 2021, *Delfarma* (C-488/20, EU:C:2021:956, paragraph 37).

65 Judgments of 19 November 1991, *Francovich and Others* (C-6/90 and C-9/90, EU:C:1991:428, paragraphs 31 to 33); of 5 March 1996, *Brasserie du pêcheur and Factortame* (C-46/93 and C-48/93, EU:C:1996:79, paragraph 20); and of 19 December 2019, *Deutsche Umwelthilfe* (C-752/18, EU:C:2019:1114, paragraph 54).

66 Judgments of 19 November 1991, *Francovich and Others* (C-6/90 and C-9/90, EU:C:1991:428, paragraph 35); of 5 March 1996, *Brasserie du pêcheur and Factortame* (C-46/93 and C-48/93, EU:C:1996:79, paragraph 31); of 14 March 2013, *Leth* (C-420/11, EU:C:2013:166, paragraph 40); of 28 July 2016, *Tomášová* (C-168/15, EU:C:2016:602, paragraph 18); and of 19 December 2019, *Deutsche Umwelthilfe* (C-752/18, EU:C:2019:1114, paragraph 54).

67 Now Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ 2012 L 26, p. 1).

68 Judgment of 14 March 2013, *Leth* (C-420/11, EU:C:2013:166, paragraphs 32 and 36). See also judgments of 7 January 2004, *Wells* (C-201/02, EU:C:2004:12, paragraph 66), and of 17 November 2016, *Stadt Wiener Neustadt* (C-348/15, EU:C:2016:882, paragraph 45).

69 Judgment of 14 March 2013, *Leth* (C-420/11, EU:C:2013:166, paragraphs 45 to 47), but see also my Opinion in *Leth* (C-420/11, EU:C:2012:701, points 50 to 55).

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70 Proposal for a Directive of the European Parliament and of the Council on ambient air quality and cleaner air for Europe (COM(2005) 447 final, p. 2).

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71 Judgments of 10 May 2011, *Commission* v *Sweden* (C-479/10, not published, EU:C:2011:287); of 15 November 2012, *Commission* v *Portugal* (C-34/11, EU:C:2012:712); of 19 December 2012, *Commission* v *Italy* (C-68/11, EU:C:2012:815); of 5 April 2017, *Commission* v *Bulgaria* (C-488/15, EU:C:2017:267); of 22 February 2018, *Commission* v *Poland* (C-336/16, EU:C:2018:94); of 24 October 2019, *Commission* v *France (Exceedance of limit values for nitrogen dioxide)* (C-636/18, EU:C:2019:900); of 30 April 2020, *Commission* v *Romania (Exceedance of the limit values for PM10)* (C-638/18, not published, EU:C:2020:334); of 10 November 2020, *Commission* v *Italy (Limit values – PM10)* (C-644/18, EU:C:2020:895); of 3 February 2021, *Commission* v *Hungary (Limit values – PM10)* (C-637/18, not published, EU:C:2021:92); of 4 March 2021, *Commission* v *United Kingdom (Limit values – NO2)* (C-664/18, not published, EU:C:2021:171); of 3 June 2021, *Commission* v *Germany (Limit values – NO2)* (C-635/18, not published, EU:C:2021:437); and of 28 April 2022, *Commission* v *France (Limit values – PM10)* (C-286/21, not published, EU:C:2022:319).

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72 Cases C-573/19, *Commission* v *Italy (nitrogen dioxide)*; C-730/19, *Commission* v *Bulgaria (nitrogen dioxide)*; C-125/20, *Commission* v *Spain (nitrogen dioxide)*; C-70/21, *Commission* v *Greece (PM10)*; C-342/21, *Commission* v *Slovakia (PM10)*; C-633/21, *Commission* v *Greece (nitrogen dioxide)*; and C-220/22, *Commission* v *Portugal (nitrogen dioxide)*.

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73 Judgment of 26 June 2019, *Craeynest and Others* (C-723/17, EU:C:2019:533).

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74 Judgments of 25 July 2008, *Janecek* (C-237/07, EU:C:2008:447), and of 19 December 2019, *Deutsche Umwelthilfe* (C-752/18, EU:C:2019:1114).

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75 Judgment of the Conseil d'État (Council of State) of 4 August 2021, Association les Amis de la Terre France et autres (428409, FR:CECHR:2021:428409.20210804).

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76 Judgment of 19 November 2014, *ClientEarth* (C-404/13, EU:C:2014:2382).

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77 European Environment Agency, Unequal exposure and unequal impacts: Social vulnerability to air pollution, noise and extreme temperatures in Europe, EEA Report No 22/2018, pp. 19 and 21.

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78 See also point 131 et seq. below.

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79 European Environment Agency, Unequal exposure and unequal impacts: Social vulnerability to air pollution, noise and extreme temperatures in Europe, EEA Report No 22/2018, pp. 19-22.

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80 See, moreover, points 77 and 78 above.

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81 See judgments of 25 July 2008, *Janecek* (C-237/07, EU:C:2008:447, paragraph 39); of 19 November 2014, *ClientEarth* (C-404/13, EU:C:2014:2382, paragraph 56); and of 26 June 2019, *Craeynest and Others* (C-723/17, EU:C:2019:533, paragraph 56); see also, fundamentally, my Opinion in *Wasserleitungsverband Nördliches Burgenland and Others* (C-197/18, EU:C:2019:274, point 41 et seq.).

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82 Judgment of 19 December 2019, *Deutsche Umwelthilfe* (C-752/18, EU:C:2019:1114, paragraphs 54 and 55).

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83 Judgments of 5 March 1996, *Brasserie du pêcheur and Factortame* (C-46/93 and C-48/93, EU:C:1996:79, paragraph 51); of 14 March 2013, *Leth* (C-420/11, EU:C:2013:166, paragraph 41); and of 16 July 2020, *Presidenza del Consiglio dei Ministri* (C-129/19, EU:C:2020:566, paragraph 34).

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84 Judgments of 5 March 1996, *Brasserie du pêcheur and Factortame* (C-46/93 and C-48/93, EU:C:1996:79, paragraph 56), and of 29 July 2019, *Hochtief Solutions Magyarországi Fióktelepe* (C-620/17, EU:C:2019:630, paragraph 42).

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85 Judgments of 5 March 1996, *Brasserie du pêcheur and Factortame* (C-46/93 and C-48/93, EU:C:1996:79, paragraph 57); of 12 December 2006, *Test Claimants in the FII Group Litigation* (C-446/04, EU:C:2006:774, paragraph 214); of 30 May 2017, *Safa Nicu Sepahan* v *Council* (C-45/15 P, EU:C:2017:402, paragraph 31); and of 18 January 2022, *Thelen Technopark Berlin* (C-261/20, EU:C:2022:33, paragraph 47).

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86 Judgment of 25 July 2008, *Janecek* (C-237/07, EU:C:2008:447, paragraph 44).

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87 See point 53 above.

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88 Judgment of 25 July 2008, *Janecek* (C-237/07, EU:C:2008:447, paragraphs 35, 39 and 41). See also judgment of 19 November 2014, *ClientEarth* (C-404/13, EU:C:2014:2382, paragraphs 53 and 56).

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89 See point 46 above.

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90 See judgments of 25 July 2008, *Janecek* (C-237/07, EU:C:2008:447, paragraph 46), and of 5 April 2017, *Commission* v *Bulgaria* (C-488/15, EU:C:2017:267, paragraph 105). See also judgments of 24 October 1996, *Kraaijeveld and Others* (C-72/95, EU:C:1996:404, paragraph 59); of 26 June 2019, *Craeynest and Others* (C-723/17, EU:C:2019:533, paragraphs 34 and 45); and of 3 October 2019, *Wasserleitungsverband Nördliches Burgenland and Others* (C-197/18, EU:C:2019:824, paragraphs 31 and 72).

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91 See judgment of 26 June 2019, *Craeynest and Others* (C-723/17, EU:C:2019:533, paragraphs 43 to 45).

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92 See point 20 above.

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93 Judgment of 24 October 2019, *Commission* v *France (Exceedance of limit values for nitrogen dioxide)* (C-636/18, EU:C:2019:900, paragraph 89).

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94 Judgment of 28 April 2022, *Commission* v *France (Limit values – PM10)* (C-286/21, not published, EU:C:2022:319, paragraph 77).

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95 See above, point 42 et seq.

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96 See point 20 above.

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97 Judgment of 25 March 2021, *Balgarska Narodna Banka* (C-501/18, EU:C:2021:249, paragraph 122).

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98 Judgments of 5 March 1996, *Brasserie du pêcheur and Factortame* (C-46/93 and C-48/93, EU:C:1996:79, paragraph 65); of 20 October 2011, *Danfoss and Sauer-Danfoss* (C-94/10, EU:C:2011:674, paragraph 34); and of 19 June 2014, *Specht and Others* (C-501/12 to C-506/12, C-540/12 and C-541/12, EU:C:2014:2005, paragraph 106).

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99 Judgment of 20 October 2011, *Danfoss and Sauer-Danfoss* (C-94/10, EU:C:2011:674, paragraph 36); and, to that effect, judgments of 13 July 2006, *Manfredi and Others* (C-295/04 to C-298/04, EU:C:2006:461, paragraph 64); and of 5 June 2014, *Kone and Others* (C-557/12, EU:C:2014:1317, paragraph 24).

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100 Judgment of 20 October 2011, *Danfoss and Sauer-Danfoss* (C-94/10, EU:C:2011:674, paragraph 35).

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101 To that effect, judgment of 28 October 2004, *van den Berg* v *Council and Commission* (C-164/01 P, EU:C:2004:665, paragraph 57).

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102 Commission Proposal of 21 September 2005 for a Directive of the European Parliament and of the Council on ambient air quality and cleaner air for Europe (COM(2005) 447 final, p. 2). See my Opinions in *Commission* v *Bulgaria* (C-488/15, EU:C:2016:862, points 2 and 3), and in *Craeynest and Others* (C-723/17, EU:C:2019:168, point 53).

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103 WHO global air quality guidelines: particulate matter (PM2.5 and PM10), ozone, nitrogen dioxide, sulfur dioxide and carbon monoxide. Executive summary, Geneva: World Health Organisation; 2021.

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104 See judgment of 26 June 2019, *Craeynest and Others* (C-723/17, EU:C:2019:533, paragraph 43), concerning the first indent of point 1(a) of Section B of Annex III to Directive 2008/50. Point (a)(i) of Section I of Annex VI to Directive 1999/30 already contained the same requirements.

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105 See judgment of 26 June 2019, *Craeynest and Others* (C-723/17, EU:C:2019:533, paragraph 62), Article 6 of Directive 96/62, Article 7(4) of Directive 1999/30 and Articles 6, 7 and 10 and recitals 6 and 14 of Directive 2008/50.

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106 European Environment Agency, Exceedance of air quality standards in Europe, https://www.eea.europa.eu/ims/exceedance-of-air-quality-standards, visited on 1 March 2022. According to that publication, in 2019, 10% of the urban population in the EU and the United Kingdom was exposed to excessive levels of PM10 and 3% to nitrogen dioxide.

107 Judgment of the ECtHR of 9 June 2005, *Fadeyeva v. Russia* (55723/00, CE:ECHR:2005:0609JUD005572300, §§ 87 and 88).

108 European Environment Agency, Unequal exposure and unequal impacts: Social vulnerability to air pollution, noise and extreme temperatures in Europe, EEA Report No 22/2018, pp. 19-21.