

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

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

— adoption by the Member States of a specific measure relating to a single source of SO₂ and NO_x does not appear liable, in itself, seriously to compromise the attainment of the result prescribed by Directive 2001/81. It is for the national court to review whether that is true of each of the decisions granting an environmental permit for the construction and operation of an industrial installation such as the permits at issue in the main actions;

— the third paragraph of Article 288 TFEU and Articles 6, 7(1) and (2) and 8(1) and (2) of Directive 2001/81 require the Member States, first, to draw up, to update and to revise as necessary programmes for the progressive reduction of national SO₂ and NO_x emissions, which they are obliged to make available to the public and appropriate organisations by means of clear, comprehensible and easily accessible information, and to notify to the European Commission within the time-limit prescribed, and second, to prepare and annually update national inventories of those emissions and national emission projections for 2010, which they must report to the European Commission and the European Environment Agency within the time-limit prescribed;

— the third paragraph of Article 288 TFEU and Directive 2001/81 itself do not require the Member States to refuse or to attach restrictions to the grant of an environmental permit for the construction and operation of an industrial installation such as the permits at issue in the main actions, or to adopt specific compensatory measures for each permit granted of that kind, even where the national emission ceilings for SO₂ and NO_x are exceeded or risk being exceeded.

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

Article 6 of Directive 2001/81 grants rights to individuals directly concerned which can be relied upon before the national courts in order to claim that, during the transitional period from 27 November 2002 to 31 December 2010, the Member States should adopt or envisage, within the framework of national programmes, appropriate and coherent policies and measures capable of reducing, as a whole, emissions of the pollutants covered so as to comply with the national ceilings laid down in Annex I to that directive by the end of 2010 at the latest, and should make the programmes drawn up for those purposes

available to the public and appropriate organisations by means of clear, comprehensible and easily accessible information.

(¹) OJ C 193, 15.8.2009.

Judgment of the Court (First Chamber) of 26 May 2011 — European Commission v Kingdom of Belgium

(Case C-538/09) (¹)

(Failure of a Member State to fulfil obligations — Environment — Directive 92/43/EEC — Article 6(3) — Special areas of conservation — Appropriate assessment of the implications of a plan or project which is likely to have a significant effect on a protected site — Exemption from assessment of plans or projects which are subject to a declaratory scheme — Incorrect transposition)

(2011/C 211/07)

Language of the case: French

Parties

Applicant: European Commission (represented by: D. Recchia and A. Marghelis, Agents)

Defendant: Kingdom of Belgium (represented by: T. Materne, Agent)

Re:

Failure of a Member State to fulfil obligations — Incorrect transposition of the provisions of Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7) — Obligatory environmental impact assessment where a project or a plan has an effect on a 'Natura 2000' site

Operative part of the judgment

The Court:

1. Declares that, by not requiring an appropriate environmental impact assessment to be undertaken for certain activities, subject to a declaratory scheme, where those activities are likely to have an effect on a Natura 2000 site, the Kingdom of Belgium has failed to fulfil its obligations under Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora;

2. Orders the Kingdom of Belgium to pay the costs.

(¹) OJ C 51, 27.2.2010.