Fictitious Case Study on Ambient Air Quality

ERA Workshop "How to handle court proceedings invoking non-compliance with EU air quality and noise legislation"

Dr. Christoph Sobotta,
Chambers of Advocate General Juliane Kokott
Court of Justice of the European Union

Work in Progress, licence: CC-BY-SA 3.0 Germany

Results

To be presented later.

1st Action

Following the logic of Stichting Natuur en Milieu and Others (C-165/09 to C-167/09, EU:C:2011:348) it is unclear whether the plaintiffs can obtain an annulment of the permit relying on air quality law. MS authorities enjoy discretion how to achieve air quality standards and must respect the principle of proportionality.

However, as air quality was not addressed it seems that stricter requirements under Art. 18 of Dir 2010/75 were not considered. In this case I would argue that the permit is deficient. If, however, the need for stricter requirements was discussed and denied for good reasons, eg. effective alternative measures, and these reasons were given the permit could be maintained.

Finally, it should be noted that an annulment of the permit based exclusively on the two directives – that is without reliance on transposing legislation – would amount to a horizontal effect. However, in Wells (C-201/02, EU:C:2004:12) the Court accepted such an effect in principle.

1st Action

At the first workshop, one group found a breach of Article 12(1) of Directive 2010/75 on industrial emissions, in particular of Article 12(1)(e) in combination with Article 22(2) which require, where applicable, a baseline report. However, this report only aims to control emissions into soil and groundwater.

More interesting are Article 12(1)(f), asking for the identification of significant effects of the emissions on the environment, and (d), requiring a description of the conditions of the site of the installation. Both should cover impacts on air quality.

1st Action

The EIA report of the developer under Art. 5 (1) of Dir 2011/92 should not be limited to the emissions. Their effect on the existing situation and on the applicable standards should be addressed (Art. 5 (1) (b) + Annex IV nos. 3 – 5).

In contrast, the air quality plan does not fall within the responsibility of the developer. Therefore, it doesn't seem indispensable to deal with this issue in the report. (But a wise operator would submit suggestions how the project could contribute.)

I would, however, argue that the authority's conclusions to the EIA need to address valid concerns over air quality. The depth of this discussion will depend on the concerns voiced by the public.

2nd Action

Following the logic of Janecek (C-237/07, EU:C:2008:447) and ClientEarth (C-404/13, EU:C:2014:2382) plaintiffs can obtain an order to prepare air quality plans if there is a sufficient risk. In view of the new additional emission in an area where the limit values are already breached there is such a risk. Though there is no explicit requirement to update existing plans it is clear that the existing plan in question does not sufficiently address the new emissions.

On the one hand, there probably still is time the project's emissions begin. On the other hand, it may be necessary to act very soon to have measures operational once the additional emissions arrive.

2nd Action

As regards interim measures, in my opinion their necessity depends on the possible mitigation measures. If modifications to the industrial projects can convincingly be excluded interim measures appear unnecessary. If such modifications may be necessary the question is whether they can be added lately or need to be integrated from the start.

However, according to the (unrealistic) case description nobody presented any submissions on possible mitigation. Therefore, the interim order should be granted.

Thank you for your attention!