

**ARTÍCULOS, NOTAS CRÍTICAS, COMENTARIOS, RECENSIONES,
VALORACIONES TÉCNICAS, HOMENAJES**

**MANAGEMENT OF THE QUALITY OF THE AMBIENT AIR
UNDER SECONDARY LAW OF THE EUROPEAN UNION:
CURRENT PROBLEMS¹**

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ABSTRACT: This scientific study is dedicated to the management of activities for protection of the ambient air from pollution under secondary European law. Its actuality is determined by the increasing degradation of the state of this natural resource on a global level. The attention is paid to Directives 2008/50/EC and 2016/2284/EU, which have general meaning for the quality of the ambient air. Finally, some general conclusions and recommendations are given from the examined regulation.

KEY WORDS: Management of Activities, Protection of the Air from Pollution, Secondary European Law.

РЕЗЮМЕ: Настоящото научно изследване е посветено на управлението на дейности по опазване на атмосферния въздух от замърсяване по вторичното европейско право. Неговата актуалност е детерминирана от нарастващата деградация на състоянието на този природен ресурс на глобално равнище. Вниманието е насочено към Директиви 2008/50/ЕО и 2016/2284/ЕС, които имат по-общо значение за качеството на атмосферния въздух. Накрая са направени някои по-обща изводи и препоръки от разгледаната правна уредба.

Ключови думи: управление на дейности, опазване на въздуха от замърсяване, вторично европейско право.

1. Introduction

The protection of the ambient air (hereinafter in brief – “Air”) is one of the most topical environmental problems on a national, regional and global level. The reasons are based on, from one hand, its specificity as a natural resource and respectively as a subject for legal protection, and from the other hand, the variety of factors (natural and anthropogenic) which have impact on its quality³. The

¹ This study is related to the implementation of the Project „Environmental Protection of Areas Surrounding Ports using Innovative Learning Tools for Legislation - ECOPORTIL” with code BMP1/2.3/2622/2017 under the Programme on Transnational Cooperation “Balkans-Mediterranean 2014-2020” of the European Union.

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³ See for example, Стайнов, П., *Защита на природата (правни изследвания)*, София: БАН, 1970, с. 193 – 201; Дерменджиев, И., *Общество и околна среда*, София: Отечествен фронт, 1982, с. 74; Пенчев, Г., *Сближаване на законодателството на Република България с правото на Европейския съюз в областта на опазване на въздуха от замърсяване*, София: Борис Хранов, 1998, с. 3 – 5; Пенчев, Г., *Правна защита на въздуха от замърсяване в Република България: актуални проблеми*, в: *Право, политика, администрация* [онлайн],

actuality of this problem will increase because of the unfavourable trend to deterioration of the state of the air. For example, the United Nations Environment Programme (UNEP) finds that during 1972 – 1992 pollution of the air with Sulphur and nitrogen oxides has been increased on a global level⁴, including with greenhouse gases, caused climate change⁵. Consequently, on a global level could be emphasized 3 basic environmental problems related to the quality of the air, namely “acid rains”⁶, ozone depletion⁷ and climate change⁸. That is why solving of the problem of the state of this natural resource requires efficient implementation of the national legislation, as well as the legislation of the European Union (EU) and international treaties in this field.

The protection of the air from pollution is one of the significant problems of the EU environmental policy and legislation. In art. 191, par. 1 of the Treaty on the Functioning of the European Union, 2007 (TFEU - Consolidated version – OJ C 202, 07.06.2016) it is not accidentally mentioned as one of the aims of the environmental policy of the EU “promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change”. Besides, in art. 191, par. 2, sent. 2 of the TFEU there is limitation enumeration of 4 principles of the EU environmental policy which are at the same time principles of its environmental legislation, namely precaution, prevention, environmental damage should as a priority be rectified at source, and the polluter should pay⁹.

On the level of secondary European law there are many legal acts of the EU on protection of the air from pollution which can be detached in following groups: a) legal acts with general meaning for the management of the quality of the air; b) legal acts related to protection of the air from pollution caused by separate sources; and c) legal acts on protection of the air from pollution with separate harmful substances and mixtures. In this study the attention will be paid only to some of legal acts belonging to a first of the abovementioned groups of that acts. Their evaluation is also determined of the fact that the first

Благоевград, 2015, Т. 2, № 1, с. 2 - 6 [прегледан 11.05.2016], ISSN 2367-4601, Достъпно от: http://www.lpajournal.com/wp-content/uploads/2015/02/G.Penchev-full-text.bg_.pdf

и цитираната там литература; Наумова, С., *Основни въпроси на екологичното право*, 2. прераб. и доп. изд., София: БАН-ИДП, 2012, с. 189 – 191; Божанов, С., *Законодателна уредба в областта на околната среда*, София: Арго Пъблишинг, 2006, с. 167 – 169.

⁴ See *Saving Our Planet. Challenges and Hopes*, Nairobi: UNEP, 1992, p. 2.

⁵ Ibidem, pp. 17 – 19.

⁶ Ibidem, p. 5 – 8; Kiss, A., D. Shelton, *International environmental law*, Ardsley-on-Hudson (New York): Transnational Publishers, Inc., 1991, pp. 228 – 230; Kiss, A., D. Shelton, *Manual of European environmental law*, Cambridge: Grotius Publications Limited, 1993, p. 341; Shelton, D., A. Kiss, *Judicial Handbook on Environmental Law*, Nairobi: UNEP, 2005, p. 79; *Световният екологичен проблем*, София: Партиздат, 1984, с. 16 – 17.

⁷ See *Saving Our Planet. Challenges and Hopes*, pp. 9 – 15; Kiss, A., D. Shelton, *International environmental law*, pp. 231 – 232; Kiss, A., D. Shelton, *Manual of European environmental law*, pp. 343 - 344; Shelton, D., A. Kiss, *Judicial Handbook on Environmental Law*, p. 82; *Световният екологичен проблем*, с. 18 – 20.

⁸ See *Saving Our Planet. Challenges and Hopes*, pp. 17 – 23; Kiss, A., D. Shelton, *Manual of European environmental law*, pp. 346 - 347; Shelton, D., A. Kiss, *Judicial Handbook on Environmental Law*, p. 83 – 84; *Световният екологичен проблем*, с. 17 – 18.

⁹ See for example Пенчев, Г., *Принципи на българското екологично право*, София: Фондация „Граждани на Новата епоха“, 2017, с. 170 – 184 и цитираната там литература.

reprehensible decision of the Court of Justice the EU against Bulgaria in the field of the environmental protection, ruled in 2017, is exactly related to the quality of the air in regard to the pollution with particulate matter¹⁰.

2. Legal Acts under Secondary law of the EU with general meaning for the management of activities on the protection of the air from pollution

In this field can be shown 2 directives, 2 decisions, as well as 1 resolution. The decisions have organisational and technical character that is why they will not be analysed in this study but will only be mentioned. They are: Commission Decision 2002/159/EC of 18 February 2002 on a common format for the submission of summaries of national fuel quality data (OJ L 53, 23.02.2002) and Commission Implementing Decision 2011/850/EU of 12 December 2011 laying down rules for Directives 2004/107/EC and 2008/50/EC of the European Parliament and of the Council as regards the reciprocal exchange of information and reporting on ambient air quality (OJ L 335, 17.12.2011). It also will not be considered Council Resolution of 18 December 1997 on a Community strategy to promote combined heat and power (OJ C 4, 08.01.1998) which is nonbinding for the Member States.

Hereinafter below the attention will be paid to two directives which have more general meaning for the management of the quality of the air. They are: 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 L 152, 11.06.2008) and Directive (EU) 2016/2284 of the European Parliament and of the Council of 14 December 2016 on the reduction of national emissions of certain atmospheric pollutants, amending Directive 2003/35/EC and repealing Directive 2001/81/EC (OJ L 344, 17.12.2016). They will be analyzed in a more generalized way and with more attention on the obligations of the Member States under some directives.

The main objective of Directive 2008/50/EC is determination of common assessment methods, the receipt of information on and the protection of ambient air quality (art. 1)¹¹. The definition of the legal term “ambient air” is regulated in art. 2, item 1 of this directive where it is stated that “ambient air” shall mean

¹⁰ See Case C-488/15 *European Commission vs. Republic of Bulgaria* - Judgment of the Court of 5 April 2017 (OJ C 29.05.2017), in: *EUR-Lex. Access to European Union Law* [online], [viewed 28.04.2018], Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1524862947607&uri=CELEX:62015CA0488>

¹¹ According to art. 31, par. 1 of this directive, the following directives are repealed with effect of 11.06.2010: Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management (OJ L 296, 21.11.1996, as amended); 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 L 163, 29.06.1999); Directive 2000/69/EC of the European Parliament and of the Council of 16 November 2000 relating to limit values for benzene and carbon monoxide in ambient air (OJ L 313, 13.12.2000) and Directive 2002/3/EC of the European Parliament and of the Council of 12 February 2002 relating to ozone in ambient air (OJ L 67, 09.03.2002). Besides, according to art. 31, par. 3 of Directive 2008/50/EC is repealed, with effect since the end of the second calendar year after entry into force of the measures for the implementation under art. 28, par. 2 of the same directive, Council Decision 97/101/EC of 27 January 1997 establishing a reciprocal exchange of information and data from networks and individual stations measuring ambient air pollution within the Member States (OJ L 35, 05.02.1997, as amended).

outdoor air in the troposphere, excluding workplaces as defined by Directive 89/654/EEC¹² where provisions concerning health and safety at work apply and to which members of the public do not have regular access”.

Hereinafter below will be enumerated some more important legal measures for protection of the air under this directive:

- Obligation for the Member States to designate their competent authorities and bodies, responsible for doing of some activities¹³, related to the subject of the directive (art. 3);
- Special rules on the assessment of the quality of the air (art. 5 - 11).

They could be subdivided into 2 groups: a) special rules relating to the assessment of the air quality with regard to sulfur dioxide, nitrogen dioxide and oxides of nitrogen, particulates, lead, benzene and carbon monoxide (art. 5-8); b) special rules relating to the assessment of the air quality with regard to ozone (art. 9 – 11)¹⁴. Definition of the legal term “assessment” is regulated in art. 2, item 4 of the directive, where it is written that: “assessment” shall mean any method used to measure, calculate, predict or estimate levels”.

- Special rules related to management of the quality of the air (art. 12 - 22)¹⁵.
- Special rules on the air quality plans (art. 23 - 25).

They refer to: a) the obligation for approval of such plans by the competent authorities of the Member States (art. 23); b) short-term action plans (art. 24); c) the transboundary air pollution (art. 25). According to art. 2, item 8 of the directive, “air quality plans” shall mean plans that set out measures in order to attain the limit values or target values”. Besides, the definition of the legal term “limit values” is regulated in art. 2, item 5 of the same directive, where it is shown that: “limit value” shall mean 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”.

- Special rules on the informing and reporting (art. 26 - 28).

Some of them are: a) informing the public about air quality and of these plans (art. 26); b) transmission of information and reporting to the Commission about the air quality and actions for its maintenance (art. 27).

- Establishment of “Ambient Air Quality Committee” with consultative functions to the Commission (art. 29, par. 1).

¹² Council Directive 89/654/EEC of 30 November 1989 concerning the minimum safety and health requirements for the workplace (first individual directive within the meaning of Article 16 (1) of Directive 89/391/EEC) (OJ L 393, 30.12.1989) is related to working environment.

¹³ These activities are: a) assessment of ambient air quality; b) approval of measurement systems (methods, equipment, networks and laboratories); c) ensuring the accuracy of measurements; d) analysis of assessment methods; e) coordination on their territory if Community-wide quality assurance programmes are being organised by the Commission (i.e. Commission of the EU – hereinafter in brief – “Commission”); and f) cooperation with the other Member States and the Commission.

¹⁴ In general, they refer to defining of criterion for assessment, places and methods of taking samples.

¹⁵ In general, they refer to defining of limit values for some pollutants like particulate matter and ozone as well as to actions in cases of their exceedance.

- Obligation for the Member States to lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive which must be effective, proportionate and dissuasive (art. 30).
- Obligation for these countries to communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this directive (art. 33, par. 3).

There are 17 annexes with organizational and technical character to the examined directive. They are: Annex I. Data quality objectives; Annex II. Determination of requirements for assessment of concentrations of sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter (PM₁₀ and PM_{2,5}), lead, benzene and carbon monoxide in ambient air within a zone or agglomeration; Annex III. Assessment of ambient air quality and location of sampling points for the measurement of sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter (PM₁₀ and PM_{2,5}), lead, benzene and carbon monoxide in ambient air; Annex IV. Measurements at rural background locations irrespective of concentration; Annex V. Criteria for determining minimum numbers of sampling points for fixed measurement of concentrations of sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter (PM₁₀ and PM_{2,5}), lead, benzene and carbon monoxide in ambient air; Annex VI. Reference methods for assessment of concentrations of sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter (PM₁₀ and PM_{2,5}), lead, benzene, carbon monoxide, and ozone; Annex VII. Ozone target values and long-term objectives; Annex VIII. Criteria for classifying and locating sampling points for assessments of ozone concentrations; Annex IX. Criteria for determining the minimum number of sampling points for fixed measurement of concentrations of ozone; Annex X. Measurements for ozone precursor substances; Annex XI. Limit values for the protection of human health; Annex XII. Information and alert thresholds; Annex XIII. Critical levels for the protection of vegetation; Annex XIV. National exposure reduction target, target value and target value for PM_{2,5}; Annex XV. Information to be included in the local, regional or national air quality plans for improvement in ambient air quality; Annex XVI. Public information; Annex XVII. Correlation table¹⁶.

Directive 2008/50/EC is transposed in the Bulgarian legislation with the following normative acts: Ordinance No. 7 of 03.05.1999 for assessment and management of the quality of the ambient air, adopted by the Minister of Environment and Waters (MEW) and Minister of Health (MH) (State Gazette (SG), No. 45 of 1999, into force since 01.01.1999) and Ordinance No. 12 of 15.07.2010 for norms about sulphur dioxide, nitrogen dioxide, particulate matter, lead, benzene and carbon monoxide and ozone in the ambient air, adopted by MEW and MH (SG, No. 58 of 2010, into force since 30.07.2010, as amended).

¹⁶ About some problems on the implementation of this directive, see for example Gemmer, M., B. Xiao, Air Quality Legislation and Standards in the European Union: Background, Status and Public Participation, in: *Advances in Climate Change Research*, Amsterdam, 2013, Vol. 4, Issue 1, pp. 50 – 59; Ryall, A., Enforcing EU Environmental Law against Member States: Air Pollution, National Courts and the Rule of Law, in: *European Journal of Risk Regulation*, Cambridge, 2015, Vol. 6, No. 2, pp. 305 – 308.

The main objective of Directive (EU) 2016/2284 is reduction of Member States' anthropogenic emissions in the atmosphere of sulfur dioxide, nitrogen oxides, non-methane volatile organic compounds (NMVOCs), ammonia and fine particulate matter (PM_{2,5}) by adopting of national programs for the control over the pollution of the ambient air, monitoring and reporting on the emissions of those pollutants as well as of other pollutants listed in Annex I and their effects on human health and the environment (art. 1)¹⁷. It refers to the emissions¹⁸ of the pollutants listed in Annex I from all sources of pollution located in the territory of the Member States, in their exclusive economic zones and pollution control zones¹⁹, with the exception of the Canary Islands in Spain, the overseas departments of France, the territory of Madeira and the Azores in Portugal (art. 2).

Hereinafter below could be shown some more important legal measures for protection of the air under this directive:

- Special rules related to “National emission reduction commitments”²⁰ of the Member States (art. 4).

They include: a) legal obligations for Member States to reduce their annual national emissions of sulphur dioxide, nitrogen oxides, non-methane volatile organic compounds, ammonia and fine particulate matter in a fixed periods of time; b) legal possibility for these countries to follow “a non-linear reduction trajectory if this is economically or technically more efficient”; c) exceptions for emissions from: aircrafts beyond the landing and take-off cycle; national maritime traffic to and from the territories referred to in art. 2, par. 2 and international maritime traffic²¹; emissions of nitrogen oxides and non-methane volatile organic compounds from activities falling under the 2014 Nomenclature for Reporting (NFR) as provided by the Convention on Long-range Transboundary Air Pollution, 1979²² categories 3B (manure management) and 3D (agricultural soils). According to art. 3, item 10 of the directive, “national emission reduction commitment” means the Member States' obligation in the reduction of emissions of a substance; it specifies the emission reduction that as a minimum has to be delivered in the target calendar year, as a percentage of the total of emissions released during the base year (2005)”.

¹⁷ According to art. 21, par. 1 of this directive is repealed, with effect since 01.07.2018, Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants (OJ L 309, 27.11.2001, as amended).

¹⁸ According to art. 3, item 1 of the directive, “emission” means the release of a substance from a point or diffuse source into the atmosphere”.

¹⁹ According to art. 3, item 13 of the directive, “pollution control zone” means a sea area not exceeding 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, established by a Member State for the prevention, reduction and control of pollution from vessels in accordance with applicable international rules and standards”.

²⁰ According to art. 3, item 10 of the directive, “national emission reduction commitment” means the Member States' obligation in the reduction of emissions of a substance; it specifies the emission reduction that as a minimum has to be delivered in the target calendar year, as a percentage of the total of emissions released during the base year (2005)”.

²¹ According to art. 3, item 12 of the directive, “international maritime traffic” means journeys at sea and in coastal waters by water-borne vessels of all flags, except fishing vessels, that depart from the territory of one country and arrive in the territory of another country”.

²² This convention is into force for Bulgaria since 16.03.1983. It will be also shown below in relation to participation of the EU in it.

- Special rules on possibilities for flexibility (art. 5).

They include some legal possibilities for Member States for adjustments of their annual national emission inventories for sulphur dioxide, nitrogen oxides, non-methane volatile organic compounds, ammonia and fine particulate matter in accordance with Part 4 of Annex IV to the directive.

- Special rules related to the National air pollution control programmes (art. 6).

They refer to its elaboration and adoption.

- Special rules on the financial support (art. 7).

They refer to the possibility for access to existing EU funds.

- Special rules related to the National emission inventories and projections, and informative inventory reports (art. 8).

They refer to some obligations for Member States on preparing and updating periodically their national emission inventories for pollutants, covered by the directive, as well as on drawing up an informative inventory report. Definition of the legal term “emission” is lay down in art. 3, item 1, where it is written that: “emission” means the release of a substance from a point or diffuse source into the atmosphere”.

- Special rules on the monitoring of air pollution impacts (art. 9).

They refer to some obligations for these countries in ensuring the monitoring of negative impacts of air pollution upon ecosystems based on a network of monitoring sites that is representative of their freshwater, natural and semi-natural habitats and forest ecosystem types, taking a cost-effective and risk-based approach, and also taking into account the monitoring programmes established pursuant to Union legislation and relevant requirements of the Convention on Long-range Transboundary Air Pollution.

- Special rules related to the reporting by Member States (art. 10).

They refer to obligations of these countries on presenting of reports to the Commission and to the European Environment Agency²³ about their national air pollution control programmes and national emission inventories for pollutants in the scope of the directive.

- Establishment of “European Clean Air Forum” as a consultative body to the Commission (art. 12) and also the legal possibility for the Commission to be assisted by the Ambient Air Quality Committee established by art. 29 of Directive 2008/50/EC (art. 17, par. 1).

- Special rules on the access to information (art. 14).

They refer to some obligations for: a) the Member States in ensuring public access to information about the national air pollution control programmes and any updates and the national emission inventories (including, where applicable, the adjusted national emission inventories), the national emission projections, the informative inventory reports and additional reports and information provided to the Commission in accordance with Article 10 (par. 1); b) the Commission in ensuring the active and systematic dissemination to the public of Union-wide

²³ About the status of this Agency, see Regulation (EC) No 401/2009 of the European Parliament and of the Council of 23 April 2009 on the European Environment Agency and the European Environment Information and Observation Network (OJ L 126, 21.05.2009).

emission inventories, and projections as well as informative inventory reports on a publicly accessible website (par. 2).

- Special rules related to the cooperation with third countries and coordination within international organisations (art. 15).
- Obligation for the Member States to lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this directive which must be effective, proportionate and dissuasive (art. 18).
- Obligation for these countries to communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this directive (art. 20, par. 3).

There are 6 annexes with organizational and technical character to the examined directive. They are: Annex I. Monitoring and reporting of atmospheric emissions; Annex II. National emission reduction commitments; Annex III. Content of National air pollution control programmes referred to in articles 6 and 10; Annex IV. Methodologies for the preparation and updating of National emission inventories and projections, informative inventory reports and adjusted National emission inventories referred to in articles 5 and 8; Annex V. Optional indicators for monitoring air pollution impacts referred to in article 9; Annex VI. Correlation table.

Directive (EU) 2016/2284 is transposed in the Bulgarian legislation with the following normative acts: Ordinance No. 7 of 21.10.2003 for norms of admissible emissions of volatile organic compounds emitted in the environment, mainly in the ambient air, as a result of the use of solvents in separate installations, adopted by the MEW, the Minister of Economy (MI), the Minister of Territorial Development and Public Works (MTDPW) and the MH (SG, No. 96 of 2003, as amended); Ordinance No. 10 of 06.10.2003 for norms of admissible emissions (concentrations of exhaust gases) of sulphur dioxide, nitrogen oxides and general dust, emitted in the ambient air by large combustion installations, adopted by the MEW, the MI, the Minister of Energy and Energy Resources, the MTDPW and the MH (SG, No. 93 of 2003, as amended); Ordinance No. 1 of 27.06.2005 for norms of admissible emissions of harmful substances (pollutants), emitted into the atmosphere by objects and activities with non-mobile sources of emissions, adopted by the MEW, the MI, the MH and the MTDPW (SG, No. 64 of 2005, into force since 06.08.2005); Ordinance for reduction of the emissions of volatile organic compounds in separate paints, varnishes and auto-reparatory products, adopted by Decree of the Council of Ministers (CM) No. 40 of 23.02.2007 (SG, No. 20 of 2007, into force since 06.03.2007, as amended); and Ordinance for norms of admissible emissions of sulphur dioxide, nitrogen oxides and dust, adopted by Decree of the CM No. 354 of 28.12.2012 (SG, No. 2 of 2013, into force since 08.01.2013, as amended).

3. Some cases before the Court of Justice of the European Union related to the implementation of Directive 2008/50/EC

Among the directives examined above, it must be pointed out that there are some judgments of the Court of Justice of the European Union (CJEU) in cases

related to Directive 2008/50/EC. Hereinafter below will be enumerated only some of them which have more importance from the point of view of the fulfillment of the requirements of this directive in the national legislation of the Member States. Two of them are related to the failure of separate Member States to comply with some requirements of Directive 2008/50/EC and one of them is related to interpretation by the CJEU of some articles of this directive. It could be shown following judgments in cases on this directive:

- Case C-404/13 *The Queen, on the application of: Client Earth vs. The Secretary of State for the Environment, Food and Rural Affairs*, Judgment of the Court of 19 November 2014²⁴;
- Case C-488/15 *European Commission vs. Republic of Bulgaria*, Judgment of the Court of 05 April 2017²⁵;

²⁴ See *EUR-Lex. Access to European Union Law* [online], [viewed 14.05.2018], Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62013CJ0404&qid=1526245122126&from=EN>

In the operative part of this Judgment, the CJEU rules that:

“1. Article 22 (1) 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 must be interpreted as meaning that, in order to be able to postpone by a maximum of five years the deadline specified by the directive for achieving conformity with the limit values for nitrogen dioxide specified in Annex XI thereto, a Member State is required to make an application for postponement and to establish an air quality plan when it is objectively apparent, having regard to existing data, and notwithstanding the implementation by that Member State of appropriate pollution abatement measures, that conformity with those values cannot be achieved in a given zone or agglomeration by the specified deadline. Directive 2008/50 does not contain any exception to the obligation flowing from Article 22 (1).

2. Where it is apparent that conformity with the limit values for nitrogen dioxide established in Annex XI to Directive 2008/50 cannot be achieved in a given zone or agglomeration of a Member State by 1 January 2010, the date specified in that annex, and that Member State has not applied for postponement of that deadline under Article 22 (1) of Directive 2008/50, the fact that an air quality plan which complies with the second subparagraph of Article 23 (1) of the directive has been drawn up, does not, in itself, permit the view to be taken that that Member State has nevertheless met its obligations under Article 13 of the directive.

3. Where a Member State has failed to comply with the requirements of the second subparagraph of Article 13 (1) of Directive 2008/50 and has not applied for a postponement of the deadline as provided for by Article 22 of the directive, it is for the national court having jurisdiction, should a case be brought before it, to take, with regard to the national authority, any necessary measure, such as an order in the appropriate terms, so that the authority establishes the plan required by the directive in accordance with the conditions laid down by the latter.”

²⁵ See *EUR-Lex. Access to European Union Law* [online], [viewed 14.05.2018], Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62015CA0488&qid=1526239581049&from=EN>

In p. 1 of the operative part of this Judgment, the CJEU declares that:

“- by exceeding the daily and annual limit values for PM10 concentrations systematically and continuously from 2007 until 2014 inclusive in the zones and agglomerations BG0001 AG Sofia, BG0002 AG Plovdiv, BG0004 North Bulgaria, BG0005 South-West Bulgaria and BG0006 South-East Bulgaria;

- by exceeding the daily limit value for PM10 concentrations systematically and continuously from 2007 until 2014 inclusive in the zone BG0003 AG Varna and the annual limit value in 2007, 2008 and from 2010 until 2014 inclusive in zone BG0003 AG Varna,

the Republic of Bulgaria has failed to fulfil its obligations under the provisions of Article 13 (1) of, in conjunction with Annex XI to, 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, and

- Case C-336/16 *European Commission vs. Republic of Poland*, Judgment of the Court of 22 February 2018²⁶.

4. *Multilateral treaties on protection of the air from pollution with the participation of the EU*

The EU is a contracting party to some multilateral universal (i.e. on a global scale) treaties in the examined field. They will only be enumerated below, as follows:

- Convention on Long-range Transboundary Air Pollution (Geneva, 1979)²⁷;
- Protocol to the 1979 Convention on Long-range Transboundary Air Pollution on Long-term Financing of the Cooperative Programme for Monitoring and Evaluation of the Long-range Transmission of Air Pollutants in Europe (EMEP) (Geneva, 1984)²⁸;
- Protocol to the 1979 Convention on Long-range Transboundary Air Pollution concerning the Control of Emissions of Nitrogen Oxides or their Transboundary Fluxes (Sofia, 1988)²⁹;

- in view of the fact that the daily and annual limit values for PM10 concentrations in all of the abovementioned zones and agglomerations continued to be exceeded, the Republic of Bulgaria has failed to fulfil its obligations under the second subparagraph of Article 23 (1) of that directive and in particular the obligation to keep the exceedance period as short as possible, as regards the period from 11 June 2010 to the year 2014 inclusive”.

²⁶ See *EUR-Lex. Access to European Union Law* [online], [viewed 14.05.2018], Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62016CJ0336&from=EN>
In p. 1 of the operative part of this Judgment, CJEU rules that:

“The Republic of Poland has failed to fulfil its obligations under, respectively, Article 13 (1), in conjunction with Annex XI, the second subparagraph of Article 23 (1), and Article 22 (3) of, in conjunction with Annex XI to, 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, for the following reasons:

- since 2007 and up to 2015 inclusive, the daily limit values for particulate matter PM10 concentrations were exceeded in 35 zones for the assessment and management of ambient air quality and the annual limit values for particulate matter PM10 concentrations were exceeded in 9 zones for the assessment and management of ambient air quality;
- no appropriate measures have been incorporated in ambient air quality programmes to ensure that the exceedance period of particulate matter PM10 concentrations limit values is kept as short as possible;
- the daily limit values for particulate matter PM10 concentrations in ambient air, increased by the margin of tolerance, were exceeded from 1 January 2010 to 10 June 2011 in the Radom, Pruszków-Żyrardów, Kędzierzyn-Koźle zones, as well as from 1 January 2011 to 10 June 2011 in the Ostrów-Kępnno zone; and

- second subparagraph of Article 23 (1) of Directive 2008/50 was not correctly implemented.”

²⁷ See Council Decision 81/462/EEC of 11 June 1981 on the conclusion of the Convention on Long-range Transboundary Air Pollution (OJ L 171, 27.06.1981).

²⁸ See Council Decision 86/277/EEC of 12 June 1986 on the conclusion of the Protocol to the 1979 Convention on Long-range Transboundary Air Pollution on Long-term Financing of the Cooperative Programme for Monitoring and Evaluation of the Long-range Transmission of Air Pollutants in Europe (EMEP) (OJ L 181, 04.07.1986).

²⁹ See Council Decision 93/361/EEC of 17 May 1993 on the accession of the Community to the Protocol to the 1979 Geneva Convention on Long-range Transboundary Air Pollution concerning the Control of Emissions of Nitrogen Oxides or Their Transboundary Fluxes (OJ L 149, 21.06.1993).

- Protocol to the 1979 Convention on Long-range Transboundary Air Pollution on Further Reduction of Sulphur Emissions (Oslo, 1994)³⁰;
- Protocol to the 1979 Convention on Long-range Transboundary Air Pollution on Heavy Metals (Aarhus, 1998)³¹;
- Protocol to the 1979 Convention on Long-range Transboundary Air Pollution to Abate Acidification, Eutrophication and Ground-level Ozone (Gothenburg, 1999)³²;
- Vienna Convention for the Protection of the Ozone Layer (Vienna, 1985)³³;
- Montreal protocol on Substances that Deplete the Ozone Layer (Montreal, 1987)³⁴;
- Amendment to the Montreal protocol on Substances that Deplete the Ozone Layer (London, 1990)³⁵;
- Amendment to the Montreal protocol on Substances that Deplete the Ozone Layer (Copenhagen, 1992)³⁶;
- Amendment to the Montreal protocol on Substances that Deplete the Ozone Layer (Montreal, 1997)³⁷;
- Amendment to the Montreal protocol on Substances that Deplete the Ozone Layer (Beijing, 1999)³⁸;
- Amendment to the Montreal protocol on Substances that Deplete the Ozone Layer (Kigali-Rwanda, 2016)³⁹;

³⁰ See Council Decision 98/686/EC of 23 March 1998 on the conclusion by the European Community of the Protocol to the 1979 Convention on Long-range Transboundary Air Pollution on Further Reductions of Sulphur Emissions (OJ L 326, 03.12.1998).

³¹ See Council Decision 2001/379/EC of 4 April 2001 on the approval, on behalf of the European Community, of the Protocol to the 1979 Convention on Long-range Transboundary Air Pollution on Heavy Metals (OJ L 134, 17.05.2001).

³² See Council Decision 2003/507/EC of 13 June 2003 on the accession of the European Community, to the Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution to Abate Acidification, Eutrophication and Ground-Level Ozone (OJ L 179, 17.07.2003).

³³ See Council Decision 88/540/EEC of 14 October 1988 concerning the conclusion of the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer (OJ L 297, 31.10.1988).

³⁴ See also Council Decision 88/540/EEC of 14 October 1988 concerning the conclusion of the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer (OJ L 297, 31.10.1988).

³⁵ See Council Decision 91/690/EEC of 12 December 1991 concerning the conclusion of the amendment to the Montreal Protocol on substances that deplete the ozone layer as adopted in June 1990 in London by the Parties to the Protocol (OJ L 377, 31.12.1991).

³⁶ See Council Decision 94/68/EC of 2 December 1993 concerning the conclusion of the amendment to the Montreal Protocol on substances that deplete the ozone layer (OJ L 33, 07.02.1994).

³⁷ See Council Decision 2000/646/EC of 17 October 2000 concerning the conclusion of the amendment to the Montreal Protocol on substances that deplete the ozone layer (OJ L 272, 25.10.2000).

³⁸ See Council Decision 2002/215/EC of 4 March 2002 concerning the conclusion of the Fourth Amendment to the Montreal Protocol on substances that deplete the ozone layer (OJ L 72, 14.03.2002).

³⁹ See Council Decision (EU) 2017/1541 of 17 July 2017 on the conclusion, on behalf of the European Union, of the Kigali Amendment to the Montreal Protocol on substances that deplete the ozone layer (OJ L 236, 14.09.2017).

- United Nations Framework Convention on Climate Change (New York, 1992)⁴⁰;
- Kyoto Protocol to the United Nations Framework Convention on Climate Change (Kyoto, 1987)⁴¹;
- Doha Amendment to the Kyoto Protocol to the United Nations Framework Convention on Climate Change (Doha-Qatar, 2012)⁴²;
- Paris Agreement to the United Nations Framework Convention on Climate Change (Paris, 2015)⁴³.

5. Conclusions

Finally, some general conclusions and recommendations can be given from the examined regulation.

- Directives 2008/50/EC and (EU) 2016/2284 have been transposed relatively well in the Bulgarian legislation.
- Because of the complicated content of these directives, the implementation of their requirements needs of effective collaboration between scientists and practitioners from different fields of science and social practice.
- The implementation of the requirements of the examined directives in domestic law requires for the national competent authorities to pay more attention to the observance of the limit values for the relevant pollutants of the air. Under its legal nature, the limit values are special kind of legal norms with mainly technical character, which are important indicator for the favourable state of the environment, and in particular of the air as one of its components.

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⁴⁰ See Council Decision 94/69/EC of 15 December 1993 concerning the conclusion of the United Nations Framework Convention on Climate Change (OJ L 33, 07.02.1994; corr., OJ L 146, 11.06.1994).

⁴¹ See Council Decision 2002/358/EC of 25 April 2002 concerning the approval, on behalf of the European Community, of the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder (OJ L 130, 15.05.2002).

⁴² See Council Decision (EU) 2015/1339 of 13 July 2015 on the conclusion, on behalf of the European Union, of the Doha Amendment to the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder (OJ L 207, 04.08.2015).

⁴³ See Council Decision (EU) 2016/1841 of 5 October 2016 on the conclusion, on behalf of the European Union, of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change (OJ L 282, 19.10.2016).

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<i>Recibido el 02 de octubre de 2020. Aceptado el 29 de marzo de 2022</i>
