



Reports of Cases

OPINION OF ADVOCATE GENERAL
KOKOTT

delivered on 14 December 2023¹

Case C-626/22

C.Z. and Others

v

Ilva S.p.A. in Amministrazione Straordinaria and Others

(Request for a preliminary ruling from the Tribunale di Milano (District Court, Milan, Italy))

(Request for a preliminary ruling – Directive 2010/75 – Industrial emissions – Integrated pollution prevention and control – Reconsideration and updating of permit conditions – Measures to protect the environment and human health)

I. Introduction

1. The Ilva steelworks in Taranto, Italy, is one of the largest installations of its kind in Europe and an important economic factor. The European Court of Human Rights ('ECtHR') has found, however, that it has significant adverse effects on the environment and harms the health of local residents.²

2. In European Union law, the requirements governing such installations are laid down mainly in the Industrial Emissions Directive³ and in acts establishing the best available techniques, so-called BAT conclusions, which the European Commission has drawn up together with stakeholders and representatives of Member States.

3. In a dispute over whether the Ilva steelworks is operated in accordance with those requirements, the Court is being asked about the importance of certain information concerning the effects of the steelworks on human health and about which emissions are to be taken into account. It is also being asked whether it is permitted to extend repeatedly the period for the implementation of certain permit conditions.

¹ Original language: German.

² Judgments of the ECtHR of 24 January 2019, *Cordella and Others v. Italy* (CE:ECHR:2019:0124JUD005441413), and of 5 May 2022, *Ardimento and Others v. Italy* (CE:ECHR:2022:0505JUD000464217).

³ Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ 2010 L 334, p. 17; 'the Industrial Emissions Directive').

4. The Court did recently have an opportunity to explore certain questions relating to the setting of limit values in connection with the grant of permits to installations.⁴ However, this request for a preliminary ruling gives it an opportunity to examine more closely the general permit conditions under the Industrial Emissions Directive.

II. Legal framework

A. EU law

5. The Industrial Emissions Directive recast Directive 2008/1/EC concerning integrated pollution prevention and control,⁵ which had codified Directive 96/61/EC⁶ concerning integrated pollution prevention and control without making substantive amendments. Many provisions of the three directives are nevertheless identical or at least very similar.

6. Although the referring court mentions numerous recitals and provisions of the Industrial Emissions Directive in its questions, only the following provisions are relevant.

7. Article 3 of the Industrial Emissions Directive defines various terms:

‘For the purposes of this Directive the following definitions shall apply:

...

(2) “pollution” means the direct or indirect introduction, as a result of human activity, of substances, vibrations, heat or noise into air, water or land which may be harmful to human health or the quality of the environment, result in damage to material property, or impair or interfere with amenities and other legitimate uses of the environment;

(3) “installation” means a stationary technical unit within which one or more activities listed in Annex I or in Part 1 of Annex VII [7] are carried out, and any other directly associated activities on the same site which have a technical connection with the activities listed in those Annexes and which could have an effect on emissions and pollution;

...

(5) “emission limit value” means the mass, expressed in terms of certain specific parameters, concentration and/or level of an emission, which may not be exceeded during one or more periods of time;

...

⁴ Judgment of 9 March 2023, *Sdružení ‘Za Zemyata – dostup do pravosadie’ and Others* (C-375/21, EU:C:2023:173).

⁵ Directive of the European Parliament and of the Council of 15 January 2008 (OJ 2008 L 24, p. 8).

⁶ Council Directive of 24 September 1996 (OJ 1996 L 257, p. 26).

⁷ Points 2.2 to 2.4 of Annex I mention various industrial activities associated with steel and iron.

- (10) “best available techniques” means the most effective and advanced stage in the development of activities and their methods of operation which indicates the practical suitability of particular techniques for providing the basis for emission limit values and other permit conditions designed to prevent and, where that is not practicable, to reduce emissions and the impact on the environment as a whole:
- (a) “techniques” includes both the technology used and the way in which the installation is designed, built, maintained, operated and decommissioned;
 - (b) “available techniques” means those developed on a scale which allows implementation in the relevant industrial sector, under economically and technically viable conditions, taking into consideration the costs and advantages, whether or not the techniques are used or produced inside the Member State in question, as long as they are reasonably accessible to the operator;
 - (c) “best” means most effective in achieving a high general level of protection of the environment as a whole’.

8. Article 4(1) of the Industrial Emissions Directive lays down a permit requirement:

‘Member States shall take the necessary measures to ensure that no installation or combustion plant, waste incineration plant or waste co-incineration plant is operated without a permit.

...’

9. Article 5 of the Industrial Emissions Directive refers to the directive in respect of the conditions for a permit:

‘Without prejudice to other requirements laid down in national or Union law, the competent authority shall grant a permit if the installation complies with the requirements of this Directive.’

10. The enforcement of permit conditions is regulated in Article 8 of the Industrial Emissions Directive:

‘1. Member States shall take the necessary measures to ensure that the permit conditions are complied with.

2. In the event of a breach of the permit conditions, Member States shall ensure that:

- (a) the operator immediately informs the competent authority;
- (b) the operator immediately takes the measures necessary to ensure that compliance is restored within the shortest possible time;
- (c) the competent authority requires the operator to take any appropriate complementary measures that the competent authority considers necessary to restore compliance.

Where the breach of the permit conditions poses an immediate danger to human health or threatens to cause an immediate significant adverse effect upon the environment, and until compliance is restored in accordance with points (b) and (c) of the first subparagraph, the

operation of the installation, combustion plant, waste incineration plant, waste co-incineration plant or relevant part thereof shall be suspended.’

11. Article 10 of the Industrial Emissions Directive governs the scope of Chapter II:

‘This Chapter shall apply to the activities set out in Annex I and, where applicable, reaching the capacity thresholds set out in that Annex.’

12. Article 11 of the Industrial Emissions Directive sets out the general principles governing the basic obligations of the operator. Points (a) to (c) should be highlighted:

‘(a) all the appropriate preventive measures are taken against pollution;

(b) the best available techniques are applied;

(c) no significant pollution is caused’.

13. Article 12 of the Industrial Emissions Directive concerns the content of applications for permits. Under paragraph 1(f) and (g), a description of emissions and technologies is to be included:

‘Member States shall take the necessary measures to ensure that an application for a permit includes a description of the following:

...

(f) the nature and quantities of foreseeable emissions from the installation into each medium as well as identification of significant effects of the emissions on the environment;

(g) the proposed technology and other techniques for preventing or, where this is not possible, reducing emissions from the installation’.

14. Article 13 of the Industrial Emissions Directive contains rules on the manner in which the Commission, together with Member States, the industries concerned and non-governmental organisations promoting environmental protection, identifies the best available techniques.

15. The permit conditions for compliance with the basic obligations under Article 11 of the Industrial Emissions Directive and wider environmental quality standards under Article 18 are regulated in Article 14:

‘1. Member States shall ensure that the permit includes all measures necessary for compliance with the requirements of Articles 11 and 18.

Those measures shall include at least the following:

(a) emission limit values for polluting substances listed in Annex II, and for other polluting substances, which are likely to be emitted from the installation concerned in significant quantities, having regard to their nature and their potential to transfer pollution from one medium to another;

...

2. For the purpose of paragraph 1(a), emission limit values may be supplemented or replaced by equivalent parameters or technical measures ensuring an equivalent level of environmental protection.

3. BAT conclusions shall be the reference for setting the permit conditions.

4. Without prejudice to Article 18, the competent authority may set stricter permit conditions than those achievable by the use of the best available techniques as described in the BAT conclusions. Member States may establish rules under which the competent authority may set such stricter conditions.

5. ...

6. Where an activity or a type of production process carried out within an installation is not covered by any of the BAT conclusions or where those conclusions do not address all the potential environmental effects of the activity or process, the competent authority shall, after prior consultations with the operator, set the permit conditions on the basis of the best available techniques that it has determined for the activities or processes concerned, by giving special consideration to the criteria listed in Annex III.

7. ...'

16. Article 15(2) and (3) of the Industrial Emissions Directive contains the rules on the setting of emission limit values which are relevant in the present case:

'2. Without prejudice to Article 18, the emission limit values and the equivalent parameters and technical measures referred to in Article 14(1) and (2) shall be based on the best available techniques, without prescribing the use of any technique or specific technology.

3. The competent authority shall set emission limit values that ensure that, under normal operating conditions, emissions do not exceed the emission levels associated with the best available techniques as laid down in the decisions on BAT conclusions referred to in Article 13(5) through either of the following:

- (a) setting emission limit values that do not exceed the emission levels associated with the best available techniques. Those emission limit values shall be expressed for the same or shorter periods of time and under the same reference conditions as those emission levels associated with the best available techniques; or
- (b) setting different emission limit values than those referred to under point (a) in terms of values, periods of time and reference conditions.

Where point (b) is applied, the competent authority shall, at least annually, assess the results of emission monitoring in order to ensure that emissions under normal operating conditions have not exceeded the emission levels associated with the best available techniques.'

17. Article 18 of the Industrial Emissions Directive provides for additional measures to comply with environmental quality standards:

‘Where an environmental quality standard requires stricter conditions than those achievable by the use of the best available techniques, additional measures shall be included in the permit, without prejudice to other measures which may be taken to comply with environmental quality standards.’

18. Article 21 of the Industrial Emissions Directive concerns the periodic reconsideration and updating of permit conditions. In particular, reconsideration is necessary within four years of the decision on new BAT conclusions on the best available techniques (paragraph 3), following the adoption of new or revised environmental quality standards (paragraph 5(c)) and where

‘the pollution caused by the installation is of such significance that the existing emission limit values of the permit need to be revised or new such values need to be included in the permit’ (paragraph 5(a)).

B. Italian law and development of the permit

1. General legislation

19. Italy transposed the Industrial Emissions Directive by Decreto legislativo n. 152 del 2006 ‘Norme in materia ambientale’ (Legislative Decree No 152 of 2006 ‘Environmental rules’), also known as the ‘Testo unico Ambiente’ (Consolidated Environmental Law).

2. Specific legislation from 2012

20. Decreto legge 3 dicembre 2012, n. 207 (Decree-Law No 207 of 3 December 2012), which was converted into a law, after amendment, by Law No 231 of 24 December 2012, contains specific provisions governing the steelworks at issue. These were introduced after the judge in charge of preliminary investigations at the Tribunale di Taranto (Regional Court, Taranto, Italy) had issued an order for the sequestration, with no residual right of use, of Ilva’s plant and equipment in 2012.

21. Article 1(1) of Decree-Law No 207 introduced the concept of ‘plant or facility of strategic national importance’ and provides that, when it is absolutely imperative to protect employment and production, the Minister for the Environment may, upon the review of an Integrated Environmental Permit, authorise the continuation of the activity for 36 months, on condition that the terms and conditions set out therein are complied with, even where a judicial authority has seized the undertaking’s assets and without prejudice to the carrying on of the business activity.

22. Article 1a(1) of Decree-Law No 207 provides that, in every area affected by a plant or facility of strategic national importance, the competent health authorities for the area are to ‘draw up jointly, and update at least once a year, a report assessing the adverse effects on health, including on the basis of the regional cancer registers and the epidemiological maps of the principal illnesses associated with environmental factors’.

23. Article 3 of Decree-Law No 207 provides that ‘the steelworks of the undertaking ILVA S.p.A. in Taranto are a plant or facility of strategic national importance’ and authorises Ilva, subject to the terms and conditions of the 2012 Integrated Environmental Permit and for a period of 36 months from the entry into force of the Decree-Law (thus up to 3 December 2015), to ‘continue its production activity at the steelworks and to market and sell its goods’.

3. Specific legislation from 2013

24. In 2013, Decreto legge 4 giugno 2013, n. 61 (Decree-Law No 61 of 4 June 2013) was adopted, subsequently being converted into a law, after amendment, by Law No 89 of 3 August 2013.

25. In particular, Article 1(1) of Decree-Law No 61 lays down the general rule that undertakings of a certain size which operate at least one industrial plant or facility of strategic national importance may be placed in the hands of a special administrator where ‘the production activity has caused and is causing, objectively, serious and significant threats to the integrity of the environment and health as a result of repeated failures to comply with the Integrated Environmental Permit’.

26. Article 2(1) of Decree-Law No 61 establishes that in the case of Ilva the conditions for appointing a special administrator ‘are met’.

27. Article 1(5) of Decree-Law No 61 provides, furthermore, that when a special administrator is appointed, the Minister for the Environment is to appoint, after consulting the Minister for Health and the Minister for Economic Development, a committee of three experts having proven experience and expertise in the fields of environmental and health protection and industrial engineering. That committee is to prepare, in accordance with EU law, international law, national laws and regional laws, a ‘plan of environmental protection and health protection measures and activities which specifies the actions and timeframes necessary for ensuring compliance with the law and with the Integrated Environmental Permit’.

28. Article 1(7) of Decree-Law No 61 provides that approval of that plan, by decree of the President of the Council of Ministers ‘equates to amendment of the Integrated Environmental Permit’. The steps specified in the Integrated Environmental Permit were to be completed ‘within 36 months of the date of entry into force of the act converting [this] decree into law’, 3 August 2016. Article 1(7) also expressly provides that the assessment of adverse effects on health will not in itself bring about amendment of the Integrated Environmental Permit, but will enable the relevant region (as the body also having competence in the field of public health) to request its review (the results obtained upon analysis of the data acquired from the health authorities are classified in one of three levels according to the degree of urgency encountered, with only the third level enabling the region to request review of the Integrated Environmental Permit).

29. In order to implement Decree-Law No 61, the Decreto del Presidente del Consiglio dei Ministri del 14 marzo 2014 recante ‘Approvazione del piano delle misure e delle attività di tutela ambientale e sanitaria, a norma dell’articolo 1, commi 5 e 7, del decreto-legge 4 giugno 2013, n. 61, convertito, con modificazioni, dalla legge 3 agosto 2013, n. 89’ (Decree of the President of the Council of Ministers of 14 March 2014 approving the plan of environmental protection and health protection measures and activities in accordance with Article 1(5) and (7) of Decree-Law No 61 of 4 June 2013, which was converted into a law, after amendment, by Law No 89 of 3 August 2013) (‘the 2014 DPCM’) was adopted.

4. Specific legislation from 2015

30. Decreto-legge 5 gennaio 2015, n. 1 (Decree-Law No 1 of 5 January 2015), which was converted into a law, after amendment, by Law No 20 of 4 March 2015, extends the list of large undertakings in a state of insolvency that are eligible for the extraordinary administration procedure and extends that procedure to undertakings which operate at least one industrial plant or facility of strategic national importance. Ilva was thus placed under extraordinary administration by decree of the Minister for Economic Development of 21 January 2015, resulting in the termination of the special administration decreed by Decree-Law No 61 of 2013.

31. Decree-Law No 1 provides that the plan of measures and activities set out in the 2014 DPCM ‘shall be deemed to have been implemented if, by 31 July 2015, at least 80% of the requirements having a deadline on or before that date have been met’. It reiterates that the final deadline for meeting the remaining requirements is 3 August 2016.

5. Legislation from 2015 and 2016 on the sale of Ilva

32. Decreto legge 4 dicembre 2015, n. 191 ‘Disposizioni urgenti per la cessione a terzi dei complessi aziendali del Gruppo ILVA’ (Decree-Law No 191 of 4 December 2015 on urgent measures for the transfer of the businesses of the ILVA group), which was converted into a law, after amendment, by Law No 13 of 1 February 2016, and Decreto legge 9 giugno 2016, n. 98 (Decree-Law No 98 of 9 June 2016 on urgent measures to complete the transfer of the businesses of the ILVA group), which was converted into a law, after amendment, by Law No 151 of 1 August 2016, govern the public procurement procedure for the transfer of the businesses of the Ilva group.

33. In particular, Article 1(8.1) and (8.2) of Decree-Law No 191 of 2015 provides that the successful tenderer will be entitled to submit an application for the modification of the environmental protection measures and activities set out in the plan approved by the 2014 DPCM. The proposed changes must ensure environmental protection standards consistent with the forecasts in the plan approved by the 2014 DPCM, in so far as they are compatible, and are to be ordered by DPCM, which is to ‘have the same effect as an Integrated Environmental Permit, replace the environmental impact assessment, where necessary, and conclude all ongoing integrated environmental permit procedures’.

34. Furthermore, the period for implementing all the measures prescribed by the 2012 Integrated Environmental Permit and the plan approved by the 2014 DPCM was extended to 30 June 2017.

35. Decree-Law No 98 of 2016 brought forward the assessment of the proposed changes to the environmental plan set out in the 2014 DPCM to a phase prior to the award of the contract. It also provided for the adoption of a new DPCM, containing the amendments to the 2014 DPCM and any authorisations needed in order to operate the steelworks, in the light of the new business plan presented by the successful tenderer.

36. Decreto-legge 30 dicembre 2016, n. 244 (Decree-Law No 244 of 30 December 2016), which was converted into a law, after amendment, by Law No 19 of 27 February 2017, again extends the period for implementing the measures prescribed by the 2012 Integrated Environmental Permit and the plan approved by the 2014 DPCM to 30 September 2017. It also added to the current Integrated Environmental Permit a deadline for completing specific environmental clean-up measures.

6. Permit from 2017

37. The DPCM del 29 settembre 2017, rubricato ‘Approvazione delle modifiche al Piano delle misure e delle attività di tutela ambientale e sanitaria di cui al decreto del Presidente del Consiglio dei ministri 14 marzo 2014, a norma dell’articolo 1, comma 8.1., del decreto-legge 4 dicembre 2015, n. 191, convertito, con modificazioni, dalla legge 1° febbraio 2016, n. 13’ (DPCM of 29 September 2017 approving the modifications to the plan of environmental protection and health protection measures and activities set out in the [2014 DPCM] in accordance with Article 1(8.1) of Decree-Law No 191 of 4 December 2015, which was converted into a law, after amendment, by Law No 13 of 1 February 2016) (‘the 2017 DPCM’), contains the final changes to the permit for the Ilva steelworks indicated in the request for a preliminary ruling.

38. It provides for the changes and additions to the environmental plan set out in the 2014 DPCM and set a further deadline of 23 August 2023 for completing specific environmental clean-up measures.

39. It also provides that, if the plan is not completely carried out for reasons independent of the operator’s will, a procedure will be initiated to postpone the deadline.

III. Facts and request for a preliminary ruling

40. In Taranto there is a steelworks owned by Ilva which is in extraordinary administration. It is operated by Acciaierie d’Italia S.p.A., a subsidiary of Acciaierie d’Italia Holding S.p.A..⁸ The ECtHR stated in a judgment delivered in 2019 that it is the largest industrial steelworks complex in Europe, covering an area of roughly 1 500 ha and employing around 11 000 workers.⁹

41. Although the steelworks has been operated for a long time, the competent authorities granted a permit for its operation for the first time on 4 August 2011 on the basis of the general Italian rules implementing Directive 2008/1, which was replaced by the Industrial Emissions Directive. They amended that permit on 26 October 2012.

42. As is clear from the relevant Italian rules, however, since the end of 2012 the steelworks has no longer been operated on the basis of the general Italian rules implementing the Industrial Emissions Directive, but on the basis of repeatedly amended specific legislation.

43. That legislation provides *inter alia* for ongoing monitoring of the health situation in the surrounding area, which may under certain conditions give grounds to review the permit.

44. Furthermore, it laid down periods for implementing measures to reduce adverse environmental effects which were already contained in the amended Integrated Environmental Permit from 2012. After a period up to 3 August 2016 had initially been provided for in Decree-Law No 61 of 2013, that period was subsequently extended several times, according to the request for a preliminary ruling most recently in 2017, up to 23 August 2023.

⁸ According to the company’s website, it was privatised in 1995 and a 62% stake is now owned by an international steel group. The remaining shares are held by the Italian State (<https://www.acciaierieditalia.com/en/company/about-us/>, visited on 16 August 2023).

⁹ Judgment of the ECtHR of 24 January 2019, *Cordella and Others v. Italy* (CE:ECHR:2019:0124JUD005441413, § 12).

45. The applicants nevertheless assert that the period was extended again in respect of certain conditions on 10 August 2023. Decree No 278 of the Minister for the Environment and Energy Security of 10 August 2023 (decreto del Ministro dell’ambiente e della sicurezza energetica n. 278 del 10 agosto 2023)¹⁰ laid down ‘alternative measures’ (*misure alternative*).

46. The applicants, who are residents of Taranto, have brought a collective action at the Tribunale di Milano (District Court, Milan, Italy) against Ilva, Acciaierie d’Italia and Acciaierie d’Italia Holding for an injunction in respect of the operation of the installation or at least parts thereof to protect their rights to health, to peace and tranquillity in the conduct of their lives and to the climate. In their view, those rights have been very seriously affected for decades by the operation of the steelworks.

47. The Tribunale di Milano (District Court, Milan) has referred to the Court of Justice the following questions arising from those proceedings:

- ‘(1) May the [Industrial Emissions Directive], in particular recitals 4, 18, 34, 28 and 29 and Articles 3(2), 11, 12 and 23 thereof, together with the precautionary principle and the principle of the protection of human health referred to in Article 191 TFEU and Article 174 of the [EC] Treaty, be interpreted as meaning that a Member State may, on the basis of a national law, provide that the Assessment of Adverse Effects on Health (AAEH) is an act falling outside the scope of the procedure for the grant and review of the Integrated Environmental Permit (IEP) – in this instance [the 2017 DPCM] – and that the drawing up of an AAEH need not have any automatic consequences in terms of its timely and proper consideration by the competent authority in the context of an IEP/DPCM review procedure, especially where the AAEH indicates an unacceptable health risk for a significant population affected by the polluting emissions, or may that directive rather be interpreted as meaning that: (i) the tolerable risk to human health may be assessed by means of a scientific, epidemiological analysis; (ii) the AAEH must be an act coming within the scope of the IEP/DPCM grant and review procedure, and indeed a necessary prerequisite of that procedure and one demanding mandatory, proper and timely consideration by the authority having competence to grant and review the IEP?
- (2) May [the Industrial Emissions Directive], in particular, recitals 4, [15], 18, 21, 34, 28 and 29 and Articles 3(2), 11, 14, 15, 18 and 21 thereof, be interpreted as meaning that, on the basis of a national law, a Member State must provide that the Integrated Environmental Permit (in this instance, [the 2012 IEP], [the 2014 DPCM], [the 2017 DPCM]) must always take into account all the emitted substances which have been scientifically shown to be harmful, including fractions of PM₁₀ and PM_{2.5}, and which originate from the plant under assessment, or may that directive be interpreted as meaning that the Integrated Environmental Permit (the administrative decision granting authorisation) need cover only polluting substances identified in advance by reference to the nature and type of industrial activity being carried on?
- (3) May the [Industrial Emissions Directive], in particular recitals 4, 18, 21, 22, 28, 29, 34 and 43 and Articles 3(2), 25, 11, 14, 16 and 21 thereof, be interpreted as meaning that, on the basis of a national law, a Member State may, where an industrial activity is creating a serious and significant threat to the integrity of the environment and human health, extend the period within which the operator must bring the industrial activity into line with the permit

¹⁰ <https://va.mite.gov.it/File/Documento/888984>, visited on 16 October 2023.

granted, by carrying out the environmental protection and health protection measures and actions provided for therein, by approximately [7] and a half years from the deadline initially set, giving a total period of [11] years?’

48. The applicants in the main proceedings, Ilva, Acciaierie d’Italia, the Region of Puglia, the Italian Republic and the European Commission submitted written observations. Those parties and a further intervener in the domestic proceedings, Gruppo di Intervento Giuridico, also took part in the hearing held on 7 November 2023.

IV. Legal assessment

49. The referring court wishes to ascertain the importance of certain information concerning the effects of the steelworks on human health (see B) and of information concerning certain emissions (see C) and whether it is permitted to extend repeatedly the period for the implementation of certain permit conditions (see D). First, however, it is necessary to examine the objections to the admissibility of the request for a preliminary ruling.

A. Admissibility of the request for a preliminary ruling

50. Ilva and Acciaierie d’Italia claim that the request for a preliminary ruling is inadmissible. In their view, the referring court has not adequately explained why it requires an interpretation of the cited rules and recitals (see 1), under Italian law the interpretation of EU law is not relevant (see 2) and, lastly, the cited provisions neither are sufficiently precise nor can be relied upon against Ilva and Acciaierie d’Italia in the main proceedings because they are private persons (see 3).

51. In principle, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of a rule of EU law, the Court is in principle bound to give a ruling. Such questions enjoy a presumption of relevance. The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it.¹¹

1. Statement of reasons in the request for a preliminary ruling

52. Ilva and Acciaierie d’Italia rely on Article 94(c) of the Rules of Procedure in order to show that the referring court did not provide the information required by the Court to answer the request for a preliminary ruling.

¹¹ Judgment of 6 October 2021, *Sumal* (C-882/19, EU:C:2021:800, paragraphs 27 and 28 and the case-law cited).

53. Under that provision, the request for a preliminary ruling must contain a statement of the reasons which prompted the referring court or tribunal to inquire about the interpretation of certain provisions of European Union law, and the relationship between those provisions and the national legislation applicable to the main proceedings.

54. It is true in this respect that in its questions the referring court mentions a number of rules and recitals of the Industrial Emissions Directive and Article 191 TFEU without explaining in detail why it requires an interpretation of the texts mentioned.

55. It is clear from the request for a preliminary ruling, however, that the referring court wishes to ascertain whether three specific obligations arise from the texts mentioned. The purpose of the questions referred for a preliminary ruling is therefore explained sufficiently clearly in the request for a preliminary ruling.

2. *Relevance to the decision under Italian law*

56. Ilva and Acciaierie d'Italia argue, furthermore, that, by virtue of various considerations having their basis in Italian law, the requested interpretation is not relevant to the decision in the main proceedings. In particular, the referring court is able neither to annul the permit nor to disregard it in its decision. Moreover, the lawfulness of the permit has already been established with force of *res judicata*.

57. The Court is not able to decide whether these objections should be upheld, however, as it is not for the Court to interpret the national provisions governing the powers of the referring court. Such an interpretation falls within the exclusive jurisdiction of the national courts.¹²

58. Furthermore, Italy, which does not dispute the admissibility of the request for a preliminary ruling, has explained several times in connection with the *Cordella* case before the ECtHR that actions before Italian civil courts, like the main proceedings in this request for a preliminary ruling, can guarantee effective legal protection for the persons concerned in respect of health risks from the Ilva steelworks.¹³ The possibility of bringing such actions would be consistent with Article 9(3) of the Aarhus Convention,¹⁴ under which members of the public, where they meet the criteria, if any, laid down in their national law, have access to administrative or judicial procedures to challenge acts and omissions by private persons which contravene provisions of its national law relating to the environment.

59. Consequently, those objections also do not give rise to obvious doubt as to the relevance to the decision of the request for a preliminary ruling.

¹² Judgments of 27 October 2009, *ČEZ* (C-115/08, EU:C:2009:660, paragraph 57), and of 14 June 2017, *Online Games and Others* (C-685/15, EU:C:2017:452, paragraph 45).

¹³ Judgment of the ECtHR of 24 January 2019, *Cordella and Others v. Italy* (CE:ECHR:2019:0124JUD005441413, § 112), and Communication from the Italian Government to the 1459th meeting of the Committee of Ministers of the Council of Europe (March 2023), Document DH-DD(2023)36 of 6 January 2023, p. 9.

¹⁴ Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, approved by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1).

3. *Direct applicability of the provisions to be interpreted*

60. Lastly, Ilva and Acciaierie d'Italia maintain that the request for a preliminary ruling is not relevant to the decision because the direct application of the provisions to be interpreted is precluded, both in general and specifically to them as private persons. Their legal position is instead derived from the specific legislation which Italy has adopted for the steelworks.

61. It must be conceded in this regard that a directive cannot of itself impose obligations on an individual and cannot therefore be relied upon as such against an individual. If the possibility of relying on a provision of a directive that has not been transposed, or has been incorrectly transposed, were to be extended to the sphere of relations between individuals, that would amount to recognising a power in the European Union to enact obligations for individuals with immediate effect, whereas it has competence to do so only where it is empowered to adopt regulations. Accordingly, even a clear, precise and unconditional provision of a directive seeking to confer rights on or impose obligations on individuals cannot of itself apply in a dispute exclusively between private persons. Nor can a directive be relied on in a dispute between individuals for the purpose of setting aside legislation of a Member State that is contrary to that directive.¹⁵

62. The interpretation of a directive may nevertheless be relevant to the decision in a dispute between private persons as, in applying national law, national courts called upon to interpret that law are required to consider the whole body of rules of law and to apply methods of interpretation that are recognised by those rules in order to interpret it, so far as possible, in the light of the wording and the purpose of the directive concerned in order to achieve the result sought by the directive and consequently to comply with the third paragraph of Article 288 TFEU.¹⁶

63. The extent to which there is scope for such interpretation of Italian law in conformity with EU law can only be determined by the Italian courts.

64. Furthermore, according to the available information, the Italian State still holds almost 40% of the shares in Ilva¹⁷ and exerts particular influence through a special administrator and a committee of three experts. It cannot therefore be ruled out that Ilva should be considered an emanation of the Italian State, which in turn may not derive any advantage from an incorrect transposition of the Industrial Emissions Directive.¹⁸ In that case the directive could be relied upon directly against Ilva.¹⁹

65. As regards the objection that the content of the provisions mentioned in the questions referred for a preliminary ruling is not capable of establishing directly applicable obligations, this aspect may possibly have to be examined in the discussion of the individual questions, even though the questions do not refer specifically to this point.

66. Accordingly, these objections must also be rejected and the request for a preliminary ruling is admissible in its entirety.

¹⁵ Judgment of 7 August 2018, *Smith* (C-122/17, EU:C:2018:631, paragraphs 42 to 44 and the case-law cited).

¹⁶ Judgment of 7 August 2018, *Smith* (C-122/17, EU:C:2018:631, paragraph 39 and the case-law cited).

¹⁷ See above, footnote 8.

¹⁸ See judgments of 12 July 1990, *Foster and Others* (C-188/89, EU:C:1990:313, paragraph 17), and of 10 October 2017, *Farrell* (C-413/15, EU:C:2017:745, paragraph 32).

¹⁹ See judgment of 12 November 2019, *Commission v Ireland (Derrybrien Wind Farm)* (C-261/18, EU:C:2019:955, paragraph 91).

B. First question – assessment of adverse effects on health

67. By the first question, the referring court wishes to know the importance under the Industrial Emissions Directive of an assessment of adverse effects on health provided for in Italian law for the grant and review of the Integrated Environmental Permit for an installation where it indicates an unacceptable health risk for a significant population affected by the polluting emissions.

68. Article 4 of the Industrial Emissions Directive provides that Member States must take the necessary measures to ensure that no installation is operated without a permit. Under Article 5(1), the competent authority is to grant a permit, without prejudice to other requirements laid down in national or EU law, if the installation complies with the requirements of the Industrial Emissions Directive. Under Article 10, the activities set out in Annex I and, where applicable, reaching the capacity thresholds set out in that annex are subject to the requirements of Chapter II (Articles 10 to 27).

69. The steelworks at issue must be considered to constitute an installation within the meaning of Article 3(3) in conjunction with point 2.2 of Annex I (production of pig iron or steel); in addition, point 2.3 (processing of ferrous metals) and point 2.4 (ferrous metal foundries) of the annex might also be relevant. In view of the size of the installation, the qualifying thresholds should also be reached.

70. With regard to health risks, the main requirements are set out in Article 11 of the Industrial Emissions Directive, which lays down the basic obligations for the operation of installations. Points (a), (b) and (c) are of particular interest. Article 11(a) provides that all the appropriate preventive measures must be taken against pollution, point (b) requires the application of the best available techniques and under point (c) installations may not cause significant pollution.

71. Because Article 11(a) and (c) of the Industrial Emissions Directive refer to the notion of pollution, the definition of the term in Article 3(2) is of crucial importance. Under that provision, it means the direct or indirect introduction, as a result of human activity, of substances, vibrations, heat or noise into air, water or land which may, in particular, be harmful to human health.

72. In examining whether the basic obligations under Article 11(a) and (c) of the Industrial Emissions Directive are complied with, that is to say, whether sufficient preventive measures are taken against pollution and significant pollution is prevented, it is therefore necessary, contrary to the view taken by Ilva, to assess the effects of the installation on human health and the emissions of the installation which may have such effects.²⁰

73. The manner in which that assessment is to be carried out becomes apparent, however, only from closer analysis of the relevant basic obligations. In this connection, it is first necessary to clarify the meaning of Article 11(a) of the Industrial Emissions Directive, as the German version of that provision is misleading (see 1). Consideration must then be given to the notion of significant pollution under Article 11(c) (see 2) and the obligation to review a permit under Article 21 (see 3).

²⁰ See Kirton, J. and Horrocks, S., *Consideration of Human Health through IPPC: A Good Practice Guide* (Impel report 2004/10, especially pp. 12 and 13). The European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL) describes itself as an international non-profit association of the environmental authorities of the European Union Member States, acceding and candidate countries of the EU, EEA and EFTA countries and potential candidates to join the European Community. Its mission is ensuring effective implementation and enforcement of European environmental law by promoting professional collaboration, information and best-practice exchange between environmental regulators (impel.eu).

1. Article 11(a) – appropriate preventive measures

74. Article 11(a) of the Industrial Emissions Directive provides in the German version that ‘*alle geeigneten Vorsorgemaßnahmen*’ [literally, ‘all appropriate precautionary measures’] must be taken against pollution. This wording suggests a very broad obligation. The other language versions and the schematic context of the provision nevertheless limit its effect.

(a) Interpretation of the German version

75. The notion of ‘*Vorsorgemaßnahme*’ evokes the precautionary principle, on which Union policy on the environment – including the Industrial Emissions Directive²¹ – is based under Article 191(2) TFEU and which is the subject of extensive case-law.

76. This principle permits protective measures to be taken against risks where there is uncertainty as to their existence or extent in the light of the best available scientific knowledge.²² It is therefore possible that future knowledge will actually refute those risks such that the protective measures prove to be unnecessary in retrospect.

77. The Court has even interpreted certain rules of secondary legislation, having regard to the precautionary principle, as precluding measures where there remains uncertainty, in the light of the best scientific knowledge, as to whether all risks can be ruled out.²³

78. The term ‘*geeignet*’ seems to broaden even further the obligation under Article 11(a) of the Industrial Emissions Directive. A measure is considered ‘*geeignet*’ if it can be used to achieve the desired goal. Whether the necessary effort is proportionate to that goal is irrelevant. There is a margin of discretion at most in relation to the scientific question whether a measure can actually achieve its aim.

79. ‘All the appropriate precautionary measures against pollution’ within the meaning of the German version of Article 11(a) of the Industrial Emissions Directive would thus cover *all* measures which can prevent pollution the creation of which in the operation of the installation cannot be ruled out in the light of the best available scientific knowledge. On a stricter reading of the precautionary principle, that provision could even be understood to mean that an installation may be granted a permit only if all doubt can be dispelled that the installation is operated without pollution.

80. The German version of Article 11(a) of the Industrial Emissions Directive is, however, the only version requiring ‘*geeignete Vorsorgemaßnahmen*’.

²¹ Judgment of 9 March 2023, *Sdruzhenie ‘Za Zemyata – dostap do pravosadie’ and Others* (C-375/21, EU:C:2023:173, paragraph 53).

²² Judgments of 5 May 1998, *National Farmers’ Union and Others* (C-157/96, EU:C:1998:191, paragraphs 63 and 64); of 9 September 2003, *Monsanto Agricoltura Italia and Others* (C-236/01, EU:C:2003:431, paragraph 111); and of 1 October 2019, *Blaise and Others* (C-616/17, EU:C:2019:800, paragraph 43).

²³ See, with regard to the Industrial Emissions Directive, judgment of 9 March 2023, *Sdruzhenie ‘Za Zemyata – dostap do pravosadie’ and Others* (C-375/21, EU:C:2023:173, paragraph 53); with regard to 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), judgments of 7 September 2004, *Waddenvereniging and Vogelbeschermingsvereniging* (C-127/02, EU:C:2004:482, paragraphs 44, 58 and 59), and of 10 October 2019, *Luonnonsuojeluyhdistys Tapiola* (C-674/17, EU:C:2019:851, paragraph 66); and, with regard to the law on waste, judgment of 24 October 2019, *Prato Nevoso Termo Energy* (C-212/18, EU:C:2019:898, paragraph 58). See also Sobotta, C., ‘Recent applications of the precautionary principle in the jurisprudence of the CJEU – a new yardstick in EU environmental decision making?’, *ERA Forum* 2020, 723.

(b) *The other language versions*

81. The other language versions are consistent with the German version in so far as they also require ‘all’ measures to be taken. However, they do not employ the notion of precaution, but have recourse to the principle that preventive action should be taken, on which Union policy on the environment is also based under Article 191(2) TFEU. Only the Slovenian version (*‘preprečevanje’*) and the Finnish version (*‘estävyät’*) use terms which do not correspond to that principle laid down in Article 191(2) TFEU, although they too appear to mean prevention rather than precaution.

82. Thus far the Court has not really explored the principle that preventive action should be taken, although it has previously ruled that by virtue of that principle it is for the European Union and the Member States to prevent, reduce and, in so far as is possible, eliminate from the outset the sources of pollution or nuisance by adopting measures of a nature such as to eliminate *recognised* risks.²⁴ While the precautionary principle thus covers situations of uncertainty over risks, the principle that preventive action should be taken should be restricted to protective measures where the risks or hazards being addressed are recognised.²⁵

83. Furthermore, the other language versions of Article 11(a) of the Industrial Emissions Directive do not require that *‘geeignete’* [‘suitable’] measures are taken. Instead they use terms such as ‘appropriate’ (English), *‘approprié’* (French), *‘adecuado’* (Spanish) or even *‘opportuno’* (Italian). Although these terms can also be translated as *‘geeignet’*, unlike the German term they also allow for a balancing exercise to weigh whether the effort involved in the protective measure concerned is proportionate to the protective effect and the risk in question.

84. These other language versions of Article 11(a) of the Industrial Emissions Directive therefore tend to suggest an obligation to take all *appropriate* (or reasonable) measures to prevent recognised environmental risks from an installation.

(c) *Scheme and purpose of Article 11(a) of the Industrial Emissions Directive*

85. We know that the various language versions must be interpreted uniformly.²⁶ In addition, no language version can be made to override the others.²⁷ Rather, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part.²⁸ In addition, the origins of the rule can also be a factor in its interpretation.²⁹

²⁴ Judgment of 26 April 2005, *Commission v Ireland* (C-494/01, EU:C:2005:250, paragraph 165). See also, however, judgments of 5 October 1999, *Lirussi and Bizzaro* (C-175/98 and C-177/98, EU:C:1999:486, paragraph 51), and of 22 June 2000, *Fornasar and Others* (C-318/98, EU:C:2000:337, paragraph 37), which also construe the precautionary principle to that effect.

²⁵ See, in particular, my Opinion in *Bayer CropScience and Bayer v Commission* (C-499/18 P, EU:C:2020:735, point 107), and my Opinions in *ERG and Others* (C-378/08, EU:C:2009:650, points 67 and 75); *Afton Chemical* (C-343/09, EU:C:2010:258, point 60); and *Commission v France* (C-237/12, EU:C:2014:14, point 30).

²⁶ Judgments of 27 October 1977, *Bouchereau* (30/77, EU:C:1977:172, paragraphs 13 and 14); of 27 March 1990, *Cricket St Thomas* (C-372/88, EU:C:1990:140, paragraph 19); and of 6 October 2021, *Consorzio Italian Management and Catania Multiservizi* (C-561/19, EU:C:2021:799, paragraph 43).

²⁷ Judgments of 27 March 1990, *Cricket St Thomas* (C-372/88, EU:C:1990:140, paragraph 18), and of 26 January 2021, *Hessischer Rundfunk* (C-422/19 and C-423/19, EU:C:2021:63, paragraph 65).

²⁸ Judgments of 1 March 2016, *Kreis Warendorf and Osso* (C-443/14 and C-444/14, EU:C:2016:127, paragraph 27), and of 24 February 2022, *Tiketa* (C-536/20, EU:C:2022:112, paragraph 27).

²⁹ Judgments of 22 October 2009, *Zurita García and Choque Cabrera* (C-261/08 and C-348/08, EU:C:2009:648, paragraph 57); of 27 November 2012, *Pringle* (C-370/12, EU:C:2012:756, paragraph 135); of 3 October 2013, *Inuit Tapiriit Kanatami and Others v Parliament and Council* (C-583/11 P, EU:C:2013:625, paragraph 50); and of 20 December 2017, *Acacia and D’Amato* (C-397/16 and C-435/16, EU:C:2017:992, paragraph 31).

86. It is clear from the title of the directive and from the first paragraph of Article 1 that Article 11(a) of the Industrial Emissions Directive does not relate to precautionary measures but to preventive measures. However, in this respect too, the German version falls short.

87. In the German version the title includes the addition in brackets '*integrierte Vermeidung und Verminderung der Umweltverschmutzung*' ['integrated pollution prevention and control']. Furthermore, under the first paragraph of Article 1, the directive lays down rules on integrated prevention and control of pollution arising from industrial activities. Both the title and the first paragraph of Article 1 are consistent with the previously applicable Directives 96/61 and 2008/1 concerning integrated pollution prevention and control.

88. Apart from the German version, all the language versions from 1996 used, in both respects, the term meaning prevention for the purposes of Article 191(2) TFEU, for example '*prévention*' in French, 'prevention' in English or '*prevenzione*' in Italian. Most of the language versions which have been added since then also use the equivalent to prevention,³⁰ although there are language versions which, like the German version, use a different term.³¹

89. All the language versions of each of the three directives are consistent at least in so far as they did not or do not employ the notion of precaution either in the title or in Article 1.

90. Furthermore, the title and the first paragraph of Article 1 of the Industrial Emissions Directive also show that the aim of the directive is not to prevent any pollution, as reference is also made there to be mere *reduction* of pollution or in various language versions, such as English, its control. The directive therefore accepts a certain level of pollution. Accordingly, Article 11(c) prohibits only significant pollution.

91. This is confirmed by Article 11(b) of the Industrial Emissions Directive. Under that provision, the best available techniques must be applied in the operation of the installation. The 'best' techniques under Article 3(10)(c) are those which are most effective in achieving a high general level of protection of the environment as a whole. However, under Article 3(10)(b), only techniques developed on a scale which allows implementation in the relevant industrial sector, under *economically* and technically viable conditions, taking into consideration the costs and advantages, are 'available'. Economic factors must also therefore be taken into consideration in determining the best *available* techniques.

92. The restriction of the obligation to apply the best techniques to 'available techniques' would, however, be undermined if Article 11(a) of the Industrial Emissions Directive established an obligation to take any 'appropriate' preventive measure, irrespective of economic availability.

93. The fact that the obligation to apply the best available techniques under Article 11(b) of the Industrial Emissions Directive gives specific expression to the obligation under Article 11(a) to take 'all the appropriate preventive measures against pollution' was clearer in the original version of those two obligations. Under Article 3(1)(a) of Directives 96/61 and 2008/1, 'all the appropriate preventive measures [had to be] taken against pollution, in particular through application of the best available techniques'.³² The Commission did not explain why it separated these two

³⁰ For example, the Czech, Lithuanian, Maltese, Hungarian, Polish, Romanian, Slovenian and Slovak versions.

³¹ For example, the Bulgarian, Estonian, Croatian and Latvian versions.

³² Similarly, see also Article 4(1) of Council Directive 84/360/EEC of 28 June 1984 on the combating of air pollution from industrial plants (OJ 1984 L 188, p. 20): 'all appropriate preventive measures against air pollution ..., including the application of the best available technology, provided that the application of such measures does not entail excessive costs'.

elements in its proposal for the recast directive.³³ Because it explained only the new and significantly amended provisions,³⁴ it must be assumed that it considered this amendment to be insignificant.

94. Consideration should be given to effects on health in identifying the best available techniques for the European Union as a whole. Under Article 3(10) of the Industrial Emissions Directive, such techniques are to prevent or at least reduce the impact on the environment and be most effective in achieving a high general level of protection of the environment as a whole. The specific effects on health of a certain installation are relevant, however, only as part of the underlying data for assessing different techniques. For the purposes of the application of the best available techniques identified for the European Union as a whole under Article 11(b) in a certain installation, on the other hand, the specific effects on health of the installation in question are not directly relevant.

(d) Interim conclusion

95. Article 11(a) of the Industrial Emissions Directive must therefore be understood to mean that all the appropriate measures must be taken to prevent or reduce recognised environmental risks from an installation.

96. The measures under Article 11(a) of the directive include the application of the best available techniques under Article 11(b). It is not necessary in applying that provision to a certain installation to take into consideration its specific effects on health.

2. Article 11(c) of the Industrial Emissions Directive

97. Article 11(c) may nevertheless establish obligations to take protective measures going beyond the best available techniques on account of specific characteristics of the installation in question, in particular on account of on-site conditions. Under that provision, no significant pollution may be caused by the installation. If the installation causes significant pollution despite the application of the best available techniques, *additional* protective measures must therefore be taken to prevent that pollution.

98. Such protective measures are also to be considered appropriate within the meaning of Article 11(a), as the notion of ‘significant pollution’ imposes an absolute limit on the operation of installations. If protective measures to that effect are not possible, a permit may not be granted for the installation.

99. The Industrial Emissions Directive does define the notion of pollution in Article 3(2) but does not specify when it is to be regarded as significant. This can be determined only by assessing the pollution at issue and its impact.

³³ COM(2007) 844 final, Article 12 (p. 31).

³⁴ COM(2007) 844 final (p. 11).

100. Such an assessment can be inferred abstractly from other provisions. The Court has thus ruled that an exceedance of the limit values for sulphur dioxide in ambient air under Directive 2008/50/EC³⁵ is to be considered significant pollution.³⁶

101. This example is not based on the specific nature of the legislation at issue, however. Rather, in my view, any pollution which – taking into account possible exceptions – results in a state incompatible with any applicable environmental protection legislation must be classified as significant.

102. Yet, no particular rules of EU law spring to mind which could indicate what effects on human health of pollution caused by installations directly lead to the conclusion that the pollution is significant. The Court cannot assess whether there are rules of Italian national law which lead to that conclusion.

103. Nevertheless, effects on human health can also mean, irrespective of any infringement of particular provisions of environmental law, that pollution is to be considered significant within the meaning of Article 11(c) of the Industrial Emissions Directive. This is apparent from the fact that, under the second indent of Article 191(1) TFEU, Union policy on the environment – including the directive – also aims to protect human health. Furthermore, Article 9 and the first sentence of Article 168(1) TFEU and the second sentence of Article 35 of the Charter of Fundamental Rights of the European Union lay down the obligation to ensure a high level of human health protection in the definition and implementation of all Union policies and activities in all areas.³⁷ Human health protection therefore has particular importance, which can also justify significant economic disadvantages.³⁸

104. In the Industrial Emissions Directive this is highlighted by the fact that under the second sentence of Article 8(2) a breach of the permit conditions requires the suspension of the operation of the installation only in the case of an immediate *significant* adverse effect upon the environment until compliance is restored, whereas this is necessary in the case of *any* immediate danger to human health.

105. This provision does suggest that pollution which endangers human health is always significant. However, it cannot be ruled out that certain health disadvantages of very negligible importance permit the causal pollution to be considered insignificant. This view is supported in particular by the fact that the very definition of pollution in Article 3(2) of the Industrial Emissions Directive mentions the possibility of harm to human health. If this was intended always to mean that the pollution in question is significant, the legislature would have stated this expressly.

106. Accordingly, pollution which causes health disadvantages is significant only if those disadvantages are to be considered excessive harm to human health.

³⁵ Directive 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) ('the Ambient Air Quality Directive').

³⁶ Judgment of 9 March 2023, *Sdruzhenie 'Za Zemyata – dostap do pravosadie' and Others* (C-375/21, EU:C:2023:173, paragraph 50). See, previously, Article 4(4) of Directive 84/360.

³⁷ See judgments of 1 April 2008, *Parliament and Denmark v Commission* (C-14/06 and C-295/06, EU:C:2008:176, paragraph 75), and of 1 October 2019, *Blaise and Others* (C-616/17, EU:C:2019:800, paragraph 42).

³⁸ Order of 12 July 1996, *United Kingdom v Commission* (C-180/96 R, EU:C:1996:308, paragraph 93), and judgments of 17 July 1997, *Affish* (C-183/95, EU:C:1997:373, paragraph 43); of 19 April 2012, *Artegodan v Commission* (C-221/10 P, EU:C:2012:216, paragraph 99); and of 4 May 2016, *Philip Morris Brands and Others* (C-547/14, EU:C:2016:325, paragraph 156).

107. As a guideline, in 2005, IMPEL, the network of European environmental authorities, considered one additional annual death in 1 000 000 and, for non-fatal illnesses, one additional case in 100 000 to be acceptable,³⁹ and therefore the corresponding pollution not to be significant. By way of comparison, in 2011 there were around 70 deaths per 1 000 000 inhabitants as a result of transport accidents in the European Union and in 2020 that figure was 49.⁴⁰ Nevertheless, the precise boundary between significant and insignificant health disadvantages can be determined only on a case-by-case basis, taking into account the importance of the installation and possible alternatives.

108. However, health disadvantages caused by pollution which constitute a violation of fundamental rights, as was found by the ECtHR with regard to the Ilva steelworks,⁴¹ can no longer be accepted *prima facie* as insignificant. This may be why in the first question the national court refers to an unacceptable health risk for a significant population affected by the polluting emissions.

109. In the decision in the main proceedings the referring court will also have to bear in mind, however, that further protective measures have now been implemented, with the result that the situation has changed compared with the judgments of the ECtHR of 24 January 2019 and of 5 May 2022 and the previous assessment of damage to health.

110. The measures under Article 11(a) of the directive thus also include, in addition to the application of the best available techniques, the measures that are necessary to prevent significant pollution within the meaning of Article 11(c) being emitted by an installation. Pollution is to be considered significant if it results in a state incompatible with the applicable environmental protection legislation, taking into account possible exceptions. Irrespective of such legislation, pollution is to be considered significant if, taking into account the circumstances of the individual case, it results in excessive harm to human health. Pollution which violates the fundamental rights of the persons concerned by causing harm to human health is always significant.

3. Review of a permit

111. The review of a permit, which is also mentioned in the first question, is regulated in Article 21 of the Industrial Emissions Directive.

112. That review should be particularly important in considering the assessment of adverse effects on health provided for in Italian law. It is inconceivable that that assessment could have been taken into consideration in connection with the first environmental permits for the steelworks in 2011 and 2012. Instead, it was only introduced, as far as can be seen, by Article 1(7) of Decree-Law No 61 of 4 June 2013. Previously the effects on health of the installation had to be taken into consideration on the basis of other information.

³⁹ Cited in footnote 20, p. 19.

⁴⁰ Eurostat, Causes of death: tables and figures (https://ec.europa.eu/eurostat/statistics-explained/images/6/64/SE-Causes_of_death_2023.xlsx, visited on 1 September 2023).

⁴¹ Judgments of the ECtHR of 24 January 2019, *Cordella and Others v. Italy* (CE:ECHR:2019:0124JUD005441413), and of 5 May 2022, *Ardimento and Others v. Italy* (CE:ECHR:2022:0505JUD000464217).

113. A review is necessary under Article 21(5)(a) of the Industrial Emissions Directive in particular where the pollution caused by the installation is of such significance that the existing emission limit values of the permit need to be revised or new such values need to be included in the permit.

114. That provision thus establishes a link with the basic obligation under Article 11(c) of the Industrial Emissions Directive and requires a review where the pollution emitted by the installation subsequently proves to be significant. Evidence of such pollution should be apparent from the system of environmental inspections required under Article 23(1), which must address the examination of the full range of relevant environmental effects from the installations concerned. An assessment of adverse effects on health conducted since the permit was granted and periodically updated is an element of that system under Article 23(4)(a) and is clearly important to the assessment pursuant to Article 21(5)(a). It must therefore be taken into consideration.

115. Incidentally, this would also appear to be provided for in Article 1(7) of Decree-Law No 61 as under that provision the assessment of adverse effects on health cannot in itself bring about amendment of the Integrated Environmental Permit, although the Region may request a review on the basis of it.

4. Answer to the first question

116. The answer to the first question is therefore that in the case of the grant of a permit for an installation under Articles 4 and 5 of the Industrial Emissions Directive and in the case of a review of such a permit under Article 21 of that directive, compliance with the basic obligations for the operation of the installation under Article 11 must be ensured.

117. Article 11(a) of the Industrial Emissions Directive must be understood to mean that all the appropriate measures must be taken to prevent or reduce recognised environmental risks from an installation.

118. The measures under Article 11(a) of the directive include the application of the best available techniques under Article 11(b). It is not necessary in applying that provision to a certain installation to take into consideration its specific effects on health.

119. Furthermore, the measures under Article 11(a) of the directive include the measures that are necessary to prevent significant pollution within the meaning of Article 11(c) being emitted by an installation. Pollution is to be considered significant if it results in a state incompatible with the applicable environmental protection legislation, taking into account possible exceptions. Regardless of such legislation, pollution is to be considered significant if, taking into account the circumstances of the individual case, it results in excessive harm to human health. Pollution which violates the fundamental rights of the persons concerned by causing harm to human health is always significant.

120. Under Article 21(5)(a) of the directive, a review of the permit is necessary in particular where it subsequently becomes apparent that an installation causes significant pollution, for example on the basis of an assessment of adverse effects on health.

C. Second question – account taken of emissions

121. By the second question, the referring court wishes to ascertain whether under the Industrial Emissions Directive the permit for an installation must take into account all the emitted substances which have been scientifically shown to be harmful, including fractions of PM₁₀ (fine particulate matter) and PM_{2.5} (even smaller particles, very fine particulate matter), and which originate from the plant under assessment, or whether the permit need cover only polluting substances identified in advance by reference to the nature and type of industrial activity being carried on. Mention is also made of copper, mercury and naphthalene in the grounds of the request for a preliminary ruling.

122. As the Commission explains, the operator must, in its application for a permit under Article 12(1)(f) of the Industrial Emissions Directive, describe the nature and quantities of foreseeable emissions from the installation into each medium as well as significant effects of the emissions on the environment. This obligation therefore applies only to foreseeable emissions.

123. If a permit is then granted, under Article 14(1)(a) and (2) of the Industrial Emissions Directive this includes at least emission limit values or equivalent measures for polluting substances listed in Annex II and for other polluting substances which are likely to be emitted from the installation concerned in significant quantities.

124. As the applicants rightly assert, Annex II to the Industrial Emissions Directive covers the polluting substances mentioned in the request for a preliminary ruling, namely, for emissions into the air, volatile organic compounds (point 4), that is, naphthalene, metals and their compounds (point 5), namely copper and mercury, and dust including fine particulate matter (point 6), namely PM₁₀ and PM_{2.5}. For emissions into water, persistent hydrocarbons and persistent and bioaccumulable organic toxic substances (point 5) as well as metals and their compounds (point 7) are mentioned.

125. These categories are, however, couched in such general terms that it is not possible to infer from them any obligations to set specific limit values for each substance covered, for example each volatile organic compound, each metal or each category of dust. As the Commission asserts, the qualification that a significant quantity must be emitted applies not only to other polluting substances but also to polluting substances listed in Annex II to the Industrial Emissions Directive. On the other hand, polluting substances listed in Annex II which are not emitted in significant quantities do not require any limit values.

126. Where permits are granted to new installations, account can inevitably be taken only of emissions identified in advance by reference to the nature and type of industrial activity being carried on. As Ilva asserts, this matter should have been clarified in determining the best available techniques, in particular in the exchange of information under Article 13 of the Industrial Emissions Directive.

127. The best available techniques for iron and steel production are set out in a Commission Implementing Decision of 28 February 2012⁴² and are described more precisely in a BAT reference document from 2013.⁴³ These mention the polluting substances referred to in the

⁴² Implementing Decision 2012/135/EU establishing the best available techniques (BAT) conclusions under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions for iron and steel production (OJ 2012 L 70, p. 63).

⁴³ Remus, R., Aguado Monsonet, M.A., Roudier, S., Delgado Sancho, L., *Best Available Techniques (BAT) Reference Document for Iron and Steel Production* (2013).

request for a preliminary ruling,⁴⁴ albeit in some cases as elements of groups of polluting substances (dust, polycyclic aromatic hydrocarbons). Furthermore, it is conceivable that regard must also be had to BAT conclusions for other industrial activities.⁴⁵

128. As has already been explained, under Article 11(a) and (b), installations must be operated applying the best available techniques.⁴⁶ To that end, under Article 14(3), BAT conclusions, that is to say, each Commission implementing decision, are the reference for setting the permit conditions. In addition, Article 15(2) provides that limit values and equivalent measures are to be based on the best available techniques. Although it is not intended that the use of any technique or specific technology be prescribed, it must at least be ensured, under Article 15(3), that emissions do not exceed the emission levels associated with the best available techniques.

129. For fine particulate matter of the size PM₁₀ and very fine particulate matter of the size PM_{2.5} in particular, the need for stricter emission limit values could follow from the Ambient Air Quality Directive.⁴⁷ The limit values laid down in that directive for air quality are environmental quality standards within the meaning of Article 3(6) and Article 18 of the Industrial Emissions Directive.⁴⁸ If compliance with those limit values in ambient air makes it necessary to impose stricter emission limit values on the installation, they have to be determined pursuant to Article 18.

130. Because the Court has already found that limit values for PM₁₀ in ambient air were exceeded in Taranto,⁴⁹ it must be examined at least whether the emission limit values must be tightened for the steelworks at issue. However, there do not appear to have been any more exceedances outside the steelworks in the last few years.⁵⁰

131. Furthermore, Article 14(6) of the Industrial Emissions Directive shows that environmental effects not addressed in BAT conclusions are also conceivable since, under that provision, permit conditions must also be set for such effects.

132. Such additional emissions may occur not only because of non-existent or incomplete BAT conclusions for the activity concerned but also from particular conditions at the site of the installation.

⁴⁴ In particular, points 7, 21, 28, 29, 39, 55, 56, 87 and 88 of the annex to Implementing Decision 2012/135.

⁴⁵ The Region of Puglia mentions Commission Implementing Decision (EU) 2017/1442 of 31 July 2017 establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for large combustion plants (OJ 2017 L 212, p. 1). Commission Implementing Decision (EU) 2022/2110 of 11 October 2022 establishing the best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions, for the ferrous metals processing industry (OJ 2022 L 284, p. 69) and Aries, E., Gómez, J., Mavromatis, S., Klein, G., Chronopoulos, G., and Roudier, S., *Best Available Techniques (BAT) Reference Document for the Ferrous Metals Processing Industry* (2022), and European Commission, *Reference Document on Best Available Techniques in the Smitheries and Foundries Industry* (2005) may also be important.

⁴⁶ See above, points 91 to 95.

⁴⁷ See above, point 100.

⁴⁸ Judgment of 9 March 2023, *Sdruzhenie 'Za Zemyata – dostap do pravosadie' and Others* (C-375/21, EU:C:2023:173, paragraph 59).

⁴⁹ Judgment of 10 November 2020, *Commission v Italy (Limit values – PM10)* (C-644/18, EU:C:2020:895), Taranto is part of zone IT 1613 (Apulia – industrial zone).

⁵⁰ Arpa Puglia, Monitoraggio della qualità dell'aria, Rete Acciaierie d'Italia S.p.A, Report Anno 2022.

133. In the case of the grant of a permit for an installation in operation or in the case of the review of such a permit under Article 21 of the Industrial Emissions Directive, experience from operation is also to be taken into account as part of the relevant scientific data,⁵¹ that is to say, the emissions actually established.

134. In summary, it must be concluded that in the case of the grant of a permit for an installation under Articles 5, 14 and 15 of the Industrial Emissions Directive and in the case of the review of such a permit under Article 21 of that directive, account must be taken of all polluting substances emitted in significant quantities which can be expected on the basis of the information available, in particular any BAT conclusions, possible experience in actual operation of the installation and other evidence.

D. Third question – period for adaptation of an installation

135. By the third question, the referring court wishes to ascertain whether it is compatible with the Industrial Emissions Directive for Italy to extend the period initially set for carrying out the environmental protection and health protection measures provided for in the permit for the steelworks from 2012 by approximately 7 and a half years to a total period of 11 years, up to August 2023.

136. This question can be answered relatively easily on the basis of the provisions of the Industrial Emissions Directive and the previously applicable Directive 96/61 concerning integrated pollution prevention and control.

137. Because the transposed provisions of the Industrial Emissions Directive are applicable, under Article 82(1), to old installations like the steelworks at issue only from 7 January 2014, the permit was initially still subject to the transposed provisions of Directive 96/61.

138. Under Article 5(1) and Article 21(1) of Directive 96/61, the competent authorities had to see to it, by means of permits or, as appropriate, by reconsidering and, where necessary, by updating the conditions, that the Ilva steelworks, as an existing installation within the meaning of Article 2(4), operated in accordance with the directive no later than 30 October 2007, that is to say, 11 years after the entry into force of the directive.⁵² The legitimate expectation of operators of those installations in the continued application of the operating conditions was adequately protected by that generous period.

139. Those conditions had to ensure, under Article 5(1) and Article 9 of Directive 96/61, in particular that in the operation of the installation the basic obligations laid down at the time in Article 3 were complied with. Those basic obligations are now set out, in so far as is relevant to the present case, with the same content in Article 11 of the Industrial Emissions Directive and the considerations relating to the first and second questions therefore also hold for the earlier provisions.

140. It does appear conceivable, in principle, to prescribe an implementation period for conditions, thereby deferring their implementation. If, however, conditions are necessary to ensure compliance with the basic obligations in the operation of an installation, a deferral would

⁵¹ See, to that effect, judgment of 9 March 2023, *Sdruzhenie ‘Za Zemyata – dostap do pravosadie’ and Others* (C-375/21, EU:C:2023:173, paragraph 67).

⁵² See judgment of 31 March 2011, *Commission v Italy* (C-50/10, EU:C:2011:200, paragraph 29).

not have been compatible with Article 5(1) of Directive 96/61 as, under that provision, the grant of a permit required that the installation operated in accordance with the basic obligations. Under Article 3(a), the installation thus had to be operated with the best available techniques identified at the time not later than 30 October 2007. Under point (b), it also could no longer cause significant pollution from that date.

141. This also applies, of course, to changes to an existing installation. Such changes may be made only if the installation subsequently continues to comply with the applicable requirements. Provision is not made in Directives 96/61 and 2008/1 for transition periods nor are they included in the Industrial Emissions Directive.

142. As the Commission rightly asserts, Article 8 of the Industrial Emissions Directive confirms that permit conditions may not be deferred. Under Article 8(2)(b), in the event of a breach of the permit conditions, the operator must immediately take the measures necessary to ensure that compliance is restored within the shortest possible time. Furthermore, the second sentence of Article 8(2) even requires the suspension of the operation of the installation where the breach of the permit conditions poses an immediate danger to human health or threatens to cause an immediate significant adverse effect upon the environment. Article 14 of Directives 96/61 and 2008/1, on the other hand, simply required compliance with the conditions in general terms.

143. Contrary to the opinion of Ilva, Acciaierie d'Italia and Italy, there is no indication that a delay in the implementation of necessary conditions can be justified by a reduction in the production of the plant.

144. Indeed, it can be assumed that the environmental impact, and in particular the emissions from the plant as a whole, will also decrease with lower production. A reduction in production can therefore help to ensure that the limit values of the Ambient Air Quality Directive in the vicinity of the installation are complied with. It may also prevent a direct risk to human health or a direct and significant risk to the environment within the meaning of the second sentence of Article 8(2) of the Industrial Emissions Directive.

145. However, lower production does not generally lead to compliance with emission limit values. An emission limit value is defined in Article 3(5) of the Industrial Emissions Directive as the mass, expressed in terms of certain specific parameters, concentration and/or level of an emission, which may not be exceeded during one or more periods of time. Accordingly, the Commission Decision on best available techniques for the production of iron and steel of 28 February 2012⁵³ defines the emission levels for air emissions associated with BAT in the general guidance section as the mass of emitted substances per volume of waste gases or per unit mass of manufactured or processed products. As a rule, such values do not decrease due to lower production.

146. Nevertheless, the aforementioned decision of 28 February 2012 could indeed trigger a deadline for the implementation of conditions. This is because it was capable, in principle, of necessitating changes to the permit conditions. Article 13(2)(b) of Directive 2008/1, which had become applicable in the meantime, provided in this regard that the permit had to be reviewed where substantial changes in the best available techniques made it possible to reduce emissions significantly without imposing excessive costs. Accordingly, a balancing exercise was possible.

⁵³ Cited in footnote 42.

147. However, the Industrial Emissions Directive had been applicable from 7 January 2014. Article 21(3) thereof no longer provided for a balancing exercise. Instead, it allowed a period of four years for the updating of permit conditions to new techniques, in this case up to 28 February 2016.

148. Even going beyond changes to the best available techniques, a deferral may nevertheless be granted exceptionally under certain conditions.

149. If, for example, conditions are intended, under Article 14(1) and Article 18 of the Industrial Emissions Directive, to ensure compliance with an environmental quality standard, the environmental quality standard could itself be made subject to deferral. In that case there would be no need to apply conditions for compliance at an earlier stage.

150. Similarly, it is conceivable that certain pollution is initially acceptable, but subsequently becomes significant within the meaning of Article 11(c) of the Industrial Emissions Directive as a result of further developments. Such a situation could arise, for example, from the approval of other sources of pollution, especially other installations, where the total quantity of polluting substances results in the limit values under the Ambient Air Quality Directive being exceeded or the prohibition of deterioration or the requirement for improvement under Article 4(1) of Directive 2000/60/EC⁵⁴ being infringed. If such a development is foreseeable, appropriate protective measures can also be laid down for existing installations, the application of which is, however, deferred until the additional sources of pollution actually contribute to pollution. It is even reasonable to lay down protective measures at an earlier stage in this way as it gives the operator of the installation time to implement the measures.

151. There are, however, no indications of such exceptions in the present case.

152. For the sake of completeness, it should be noted, lastly, that, under Article 14(4) of the Industrial Emissions Directive and Article 193 TFEU, Member States may set stricter conditions than is necessary under the directive. The directive naturally does not contain any stipulations regarding such conditions with the result that it is up to the Member States whether they defer their application.

153. It must therefore be concluded that permit conditions which were necessary to ensure compliance by the authorised installation initially from 30 October 2007 with Directive 96/61, subsequently with Directive 2008/1 and from 7 January 2014 with the Industrial Emissions Directive had to be applied and must continue to be applied, under Article 3, Article 5(1) and Article 9 of Directive 96/61 and Directive 2008/1 and Articles 4, 5, 11 and 14 of the Industrial Emissions Directive, without further deferral upon the entry into force of the permit, unless deferral is possible on account of special circumstances, for example because the Commission has adopted a new decision establishing the best available techniques, because an environmental quality standard to be complied with within the meaning of Article 18 of the Industrial Emissions Directive becomes effective only subsequently or if certain initially acceptable pollution is to be considered significant within the meaning of Article 11(c) of the Industrial Emissions Directive only as a result of foreseeable, subsequently occurring developments.

⁵⁴ Directive of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ 2000 L 327, p. 1).

V. Conclusion

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

- (1) In the case of the grant of a permit for an installation under Articles 4 and 5 of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) and in the case of a review of such a permit under Article 21 of that directive, compliance with the basic obligations for the operation of the installation under Article 11 must be ensured.

Article 11(a) of the directive must be understood to mean that all the appropriate measures must be taken to prevent or reduce recognised environmental risks from an installation.

The measures under Article 11(a) of the directive include the application of the best available techniques under Article 11(b). It is not necessary in applying that provision to a certain installation to take into consideration its specific effects on health.

Furthermore, the measures under Article 11(a) of the directive include the measures that are necessary to prevent significant pollution within the meaning of Article 11(c) being emitted by an installation. Pollution is to be considered significant if it results in a state incompatible with the applicable environmental protection legislation, taking into account possible exceptions. Irrespective of legislation, pollution is to be considered significant if, taking into account the circumstances of the individual case, it results in excessive harm to human health. Pollution which violates the fundamental rights of the persons concerned by causing harm to human health is always significant.

Under Article 21(5)(a) of the directive, a review of the permit is necessary in particular where it subsequently becomes apparent that an installation causes significant pollution, for example on the basis of an assessment of adverse effects on health.

- (2) In the case of the grant of a permit for an installation under Articles 5, 14 and 15 of Directive 2010/75 and in the case of the review of such a permit under Article 21 of that directive, account must be taken of all polluting substances emitted in significant quantities which can be expected on the basis of the information available, in particular any BAT conclusions, possible experience in actual operation of the installation and other evidence.
- (3) Permit conditions which were necessary to ensure compliance by the authorised installation initially from 30 October 2007 with Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control, subsequently with Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control and from 7 January 2014 with Directive 2010/75 had to be applied and must continue to be applied, under Article 3, Article 5(1) and Article 9 of Directive 96/61 and Directive 2008/1 and Articles 4, 5, 11 and 14 of Directive 2010/75, without further deferral upon the entry into force of the permit, unless deferral is possible on account of special circumstances, for example because the Commission has adopted a new decision establishing the best available techniques, because an environmental quality standard to be complied with within the meaning of Article 18 of Directive 2010/75 becomes effective only subsequently or if certain initially acceptable pollution is to be considered significant within the meaning of Article 11(c) of Directive 2010/75 only as a result of foreseeable, subsequently occurring developments.