JUDGMENT OF THE COURT (First Chamber)
2 October 2003 *

In Case C-348/02,

Commission of the European Communities, represented by G. Valero Jordana and R. Amorosi, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Italian Republic, represented by U. Leanza, acting as Agent, assisted by M. Fiorilli, avvocato dello Stato, with an address for service in Luxembourg,

defendant,

APPLICATION for a declaration that by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Council Directive 1999/13/EC of 11 March 1999 on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations (OJ 1999 L 85, p. 1, and corrigendum, OJ 1999 L 188, p. 54) the Italian Republic has failed to fulfil its obligations under Article 15 of that directive,

* Language of the case: Italian.

THE COURT (First Chamber),

composed of: M. Wathelet, President of the Chamber, P. Jann and A. Rosas (Rapporteur), Judges,

Advocate General: L.A. Geelhoed,

Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 By application lodged at the Court Registry on 30 September 2002, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Council Directive 1999/13/EC of 11 March 1999 on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations (OJ 1999 L 85, p. 1, and corrigendum, OJ 1999 L 188, p. 54), the Italian Republic has failed to fulfil its obligations under Article 15 of that directive.

2 Article 15 of Directive 1999/13 provides that Member States are to bring into force the laws, regulations and administrative provisions necessary to comply with it not later than 1 April 2001 and that they are forthwith to inform the Commission thereof.

3 Since the Directive had not been transposed into Italian law within the period prescribed, the Commission initiated the procedure provided for in Article 226 EC. Having given the Italian Republic formal notice to submit its observations, on 20 December 2001 the Commission issued a reasoned opinion and called on that Member State to take the necessary measures to comply with it within two months of its notification. As the Italian Republic did not reply to the reasoned opinion, the Commission brought the present action.

4 The Commission claims that by failing to adopt the measures necessary to comply with Directive 1999/13 the Italian Republic has failed to fulfil its obligations under the relevant provisions of that directive.

5 The Italian Republic states that a draft decree implementing Directive 1999/13 has been drawn up by the Ministry of the Environment and is in the course of being approved by the Conferenza Stato Regioni (State-Regional Conference).

6 The Italian Republic does not dispute that, on expiry of the period prescribed in the reasoned opinion, the measures necessary to transpose Directive 1999/13 into national law had not yet been taken, but confines itself to indicating the stage which the implementation procedure has reached.

7 However, the Court has consistently held that the question whether there has been a failure to fulfil obligations must be examined on the basis of the position in which the Member State found itself at the end of the period laid down in the reasoned opinion and the Court cannot take account of any subsequent changes (see, in particular, Case C-455/00 *Commission* v *Italy* [2002] ECR I-9231, paragraph 21).

8 In the present case, it is established that no measure transposing Directive 1999/13 into national law had been taken when the period prescribed in the reasoned opinion expired.

9 The Commission's application must therefore be held to be well founded.

10 Therefore it should be held that by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Council Directive 1999/13 the Italian Republic has failed to fulfil its obligations under Article 15 of that directive.

Costs

11 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the Italian Republic has been unsuccessful, the Italian Republic must be ordered to pay the costs.

On those grounds,

THE COURT (First Chamber),

hereby:

1. **Declares that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Council Directive 1999/13/EC of 11 March 1999 on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations, the Italian Republic has failed to fulfil its obligations under Article 15 of that directive;**

2. **Orders the Italian Republic to pay the costs.**

Wathelet Jann Rosas

Delivered in open court in Luxembourg on 2 October 2003.

R. Grass

Registrar

M. Wathelet

President of the First Chamber