Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

5 April 2017*

(Failure of a Member State to fulfil obligations — Environment — Directive 2008/50/EC — Ambient air quality — Article 13(1) — Annex XI — Daily and annual limit values for PM_{10} concentrations — Systematic and continuous exceedance of the limit values — Article 22 — Postponement of the deadlines set to attain certain limit values — Conditions under which applicable — Article 23(1) — Air quality plans — 'Shortest possible' exceedance period — Appropriate measures — Information needed for an assessment)

In Case C-488/15,

ACTION for failure to fulfil obligations under Article 258 TFEU, brought on 14 September 2015,

European Commission, represented by E. Kružíková, S. Petrova, P. Mihaylova and E. Manhaeve, acting as Agents,

applicant,

v

Republic of Bulgaria, represented by E. Petranova and M. Georgieva, acting as Agents,

defendant,

supported by:

Republic of Poland, represented by A. Gawłowska, B. Majczyna and D. Krawczyk, acting as Agents,

intervener,

THE COURT (Third Chamber),

composed of L. Bay Larsen, President of the Chamber, M. Vilaras, J. Malenovský, M. Safjan (Rapporteur) and D. Šváby, Judges,

Advocate General: J. Kokott,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 29 September 2016,

after hearing the Opinion of the Advocate General at the sitting on 10 November 2016,

* Language of the case: Bulgarian.

gives the following

Judgment

1 By its application, the European Commission asks the Court to declare that:

— by exceeding the daily and annual limit values for PM_{10} concentrations systematically and continuously from 2007 until at least 2013 inclusive in the zones and agglomerations BG0001 AG Sofia, BG0002 AG Plovdiv, BG0004 North Bulgaria, BG0005 South-West Bulgaria and BG0006 South-East Bulgaria;

— by exceeding the daily limit value for PM_{10} concentrations systematically and continuously from 2007 until at least 2013 inclusive in zone BG0003 AG Varna and the annual limit value in 2007, 2008 and from 2010 until at least 2013 inclusive in zone BG0003 AG Varna;

— in the absence of more detailed information to the effect that the situation of exceeding the daily and annual limit values for PM_{10} concentrations in the abovementioned zones and agglomerations has changed,

the Republic of Bulgaria continues to fail to fulfil its obligations under the provisions of Article 13(1) of, in conjunction with Annex XI to, Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (OJ 2008 L 152, p. 1), and

— in view of the latest annual report on air quality, for 2013, according to which the daily and annual limit values for PM_{10} concentrations in all of the abovementioned zones and agglomerations continued to be exceeded, also declare that the Republic of Bulgaria has failed to fulfil its obligations under the second subparagraph of Article 23(1) of Directive 2008/50 and in particular the obligation to keep the exceedance period as short as possible, and declare that it continues to fail to fulfil its obligations.

Legal context

Directive 96/62/EC

2 Article 7 of Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management (OJ 1996 L 296, p. 55), entitled ‘Improvement of ambient air quality — General requirements’, stated in paragraphs 1 and 3:

‘1. Member States shall take the necessary measures to ensure compliance with the limit values.

…

3. Member States shall draw up action plans indicating the measures to be taken in the short term where there is a risk of the limit values and/or alert thresholds being exceeded, in order to reduce that risk and to limit the duration of such an occurrence. Such plans may, depending on the individual case, provide for measures to control and, where necessary, suspend activities, including motor-vehicle traffic, which contribute to the limit values being exceeded.’

3 Article 8 of that directive, entitled ‘Measures applicable in zones where levels are higher than the limit value’, provided, in paragraphs 1, 3 and 4:

‘1. Member States shall draw up a list of zones and agglomerations in which the levels of one or more pollutants are higher than the limit value plus the margin of tolerance.

…

3. In the zones and agglomerations referred to in paragraph 1, Member States shall take measures to ensure that a plan or programme is prepared or implemented for attaining the limit value within the specific time limit.

The said plan or programme, which must be made available to the public, shall incorporate at least the information listed in Annex IV.

4. In the zones and agglomerations referred to in paragraph 1, where the level of more than one pollutant is higher than the limit values, Member States shall provide an integrated plan covering all the pollutants concerned.’

4 Article 11 of Directive 96/62, entitled ‘Transmission of information and reports’, provided that the Member States were required to submit to the Commission annual reports on the compliance with the limit values for PM_{10} concentrations.

Directive 1999/30/EC

5 Recital 7 of Council Directive 1999/30/EC of 22 April 1999 relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air (OJ 1999 L 163, p. 41) stated:

‘Whereas Directive 96/62/EC requires that action plans be developed for zones within which concentrations of pollutants in ambient air exceed limit values plus any temporary margins of tolerance applicable in order to ensure compliance with limit values by the date or dates laid down; whereas in so far as they relate to particulate matter such action plans and other reduction strategies should aim to reduce concentrations of fine particles as part of the total reduction in concentrations of particulate matter.’

6 Article 5 of Directive 1999/30, entitled ‘Particulate matter’, provided:

‘1. Member States shall take the measures necessary to ensure that concentrations of PM_{10} in ambient air, as assessed in accordance with Article 7, do not exceed the limit values laid down in Section I of Annex III as from the dates specified therein.

…

3. Action plans for PM_{10} prepared in accordance with Article 8 of Directive 96/62/EC and general strategies for decreasing concentrations of PM_{10} shall also aim to reduce concentrations of $PM_{2.5}$.

4. Where the limit values for PM_{10} laid down in Section I of Annex III are exceeded owing to concentrations of PM_{10} in ambient air due to natural events which result in concentrations significantly in excess of normal background levels from natural sources, Member States shall inform the Commission in accordance with Article 11(1) of Directive 96/62/EC, providing the necessary justification to demonstrate that such exceedances are due to natural events. In such cases, Member

States shall be obliged to implement action plans in accordance with Article 8(3) of Directive 96/62/EC only where the limit values laid down in Section I of Annex III are exceeded owing to causes other than natural events.'

7 In accordance with Article 12 of Directive 1999/30, the Member States had to bring into force the laws, regulations and administrative provisions necessary to comply with that directive by 19 July 2001.

8 In order to ensure the protection of human health, Annex III to that directive set two types of limit for PM_{10} whilst distinguishing two stages, which were themselves divided into two periods. As regards the periods of stage 1, running from 1 January 2005 to 31 December 2009, the daily value not to be exceeded more than 35 times per calendar year was 50 $\mu g/m^3$ and the annual value not to be exceeded was 40 $\mu g/m^3$ per calendar year. In relation to the periods of stage 2, from 1 January 2010 the daily value not to be exceeded more than 7 times per calendar year was 50 $\mu g/m^3$ and the annual limit value was 20 $\mu g/m^3$ per calendar year.

Directive 2008/50

9 Recitals 2, 16, 18 and 19 of Directive 2008/50 state:

'(2) In order to protect human health and the environment as a whole, it is particularly important to combat emissions of pollutants at source and to identify and implement the most effective emission reduction measures at local, national and Community level. Therefore, emissions of harmful air pollutants should be avoided, prevented or reduced and appropriate objectives set for ambient air quality taking into account relevant World Health Organisation standards, guidelines and programmes.

…

(16) For zones and agglomerations where conditions are particularly difficult, it should be possible to postpone the deadline for compliance with the air quality limit values in cases where, notwithstanding the implementation of appropriate pollution abatement measures, acute compliance problems exist in specific zones and agglomerations. Any postponement for a given zone or agglomeration should be accompanied by a comprehensive plan to be assessed by the Commission to ensure compliance by the revised deadline. The availability of necessary Community measures reflecting the chosen ambition level in the Thematic Strategy on air pollution to reduce emissions at source will be important for an effective emission reduction by the timeframe established in this Directive for compliance with the limit values and should be taken into account when assessing requests to postpone deadlines for compliance.

…

(18) Air quality plans should be developed for zones and agglomerations within which concentrations of pollutants in ambient air exceed the relevant air quality target values or limit values, plus any temporary margins of tolerance, where applicable. Air pollutants are emitted from many different sources and activities. To ensure coherence between different policies, such air quality plans should where feasible be consistent, and integrated with plans and programmes prepared pursuant to Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants [(OJ 2001 L 309, p. 1)], Directive 2001/81/EC [of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants [(OJ 2001 L 309, p. 22)] and Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise

[(OJ 2002 L 189, p. 12)]. Full account will also be taken of the ambient air quality objectives provided for in this Directive, where permits are granted for industrial activities pursuant to Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control [(OJ 2008 L 24, p. 8)].

(19) Action plans should be drawn up indicating the measures to be taken in the short term where there is a risk of an exceedance of one or more alert thresholds in order to reduce that risk and to limit its duration. When the risk applies to one or more limit values or target values, Member States may, where appropriate, draw up such short-term action plans. …'

10 Article 1 of Directive 2008/50, entitled 'Subject matter', states, in paragraphs 1 to 3:

'This Directive lays down measures aimed at the following:

1. defining and establishing objectives for ambient air quality designed to avoid, prevent or reduce harmful effects on human health and the environment as a whole;

2. assessing the ambient air quality in Member States on the basis of common methods and criteria;

3. obtaining information on ambient air quality in order to help combat air pollution and nuisance and to monitor long-term trends and improvements resulting from national and Community measures.'

11 Article 2 of that directive, entitled 'Definitions', provides, in paragraphs 5, 8 and 18:

'For the purposes of this Directive:

…

5. "limit value" shall mean a level fixed on the basis of scientific knowledge, with the aim of avoiding, preventing or reducing harmful effects on human health and/or the environment as a whole, to be attained within a given period and not to be exceeded once attained;

…

8. "air quality plans" shall mean plans that set out measures in order to attain the limit values or target values;

…

18. "PM_{10}" shall mean particulate matter which passes through a size-selective inlet as defined in the reference method for the sampling and measurement of PM_{10}, EN 12341, with a 50% efficiency cut-off at 10 μm aerodynamic diameter.'

12 Article 13 of that directive, entitled 'Limit values and alert thresholds for the protection of human health', provides, in paragraph 1:

'Member States shall ensure that, throughout their zones and agglomerations, levels of sulphur dioxide, PM_{10}, lead, and carbon monoxide in ambient air do not exceed the limit values laid down in Annex XI.

…'

13 Article 22 of that directive, entitled ‘Postponement of attainment deadlines and exemption from the obligation to apply certain limit values’, is worded as follows:

‘1. Where, in a given zone or agglomeration, conformity with the limit values for nitrogen dioxide or benzene cannot be achieved by the deadlines specified in Annex XI, a Member State may postpone those deadlines by a maximum of five years for that particular zone or agglomeration, on condition that an air quality plan is established in accordance with Article 23 for the zone or agglomeration to which the postponement would apply; such air quality plan shall be supplemented by the information listed in Section B of Annex XV related to the pollutants concerned and shall demonstrate how conformity will be achieved with the limit values before the new deadline.

2. Where, in a given zone or agglomeration, conformity with the limit values for PM_{10} as specified in Annex XI cannot be achieved because of site-specific dispersion characteristics, adverse climatic conditions or transboundary contributions, a Member State shall be exempt from the obligation to apply those limit values until 11 June 2011 provided that the conditions laid down in paragraph 1 are fulfilled and that the Member State shows that all appropriate measures have been taken at national, regional and local level to meet the deadlines.

3. Where a Member State applies paragraphs 1 or 2, it shall ensure that the limit value for each pollutant is not exceeded by more than the maximum margin of tolerance specified in Annex XI for each of the pollutants concerned.

4. Member States shall notify the Commission where, in their view, paragraphs 1 or 2 are applicable, and shall communicate the air quality plan referred to in paragraph 1 including all relevant information necessary for the Commission to assess whether or not the relevant conditions are satisfied. In its assessment, the Commission shall take into account estimated effects on ambient air quality in the Member States, at present and in the future, of measures that have been taken by the Member States as well as estimated effects on ambient air quality of current Community measures and planned Community measures to be proposed by the Commission.

Where the Commission has raised no objections within nine months of receipt of that notification, the relevant conditions for the application of paragraphs 1 or 2 shall be deemed to be satisfied.

If objections are raised, the Commission may require Member States to adjust or provide new air quality plans.’

14 Article 23 of Directive 2008/50, entitled ‘Air quality plans’, states, in paragraph 1:

‘Where, in given zones or agglomerations, the levels of pollutants in ambient air exceed any limit value or target value, plus any relevant margin of tolerance in each case, Member States shall ensure that air quality plans are established for those zones and agglomerations in order to achieve the related limit value or target value specified in Annexes XI and XIV.

In the event of exceedances of those limit values for which the attainment deadline is already expired, the air quality plans shall set out appropriate measures, so that the exceedance period can be kept as short as possible. The air quality plans may additionally include specific measures aiming at the protection of sensitive population groups, including children.

Those air quality plans shall incorporate at least the information listed in Section A of Annex XV and may include measures pursuant to Article 24. Those plans shall be communicated to the Commission without delay, but no later than two years after the end of the year the first exceedance was observed.

…’

15 Article 27 of Directive 2008/50, entitled ‘Transmission of information and reporting’, provides:

‘1. Member States shall ensure that information on ambient air quality is made available to the Commission within the required timescale as determined by the implementing measures referred to in Article 28(2).

2. In any event, for the specific purpose of assessing compliance with the limit values and critical levels and the attainment of target values, such information shall be made available to the Commission no later than nine months after the end of each year and shall include:

(a) the changes made in that year to the list and delimitation of zones and agglomerations established under Article 4;

(b) the list of zones and agglomerations in which the levels of one or more pollutants are higher than the limit values plus the margin of tolerance where applicable or higher than target values or critical levels; and for these zones and agglomerations:
   (i) levels assessed and, if relevant, the dates and periods when such levels were observed;
   (ii) if appropriate, an assessment on contributions from natural sources and from re-suspension of particulates following winter-sanding or -salting of roads to the levels assessed, as declared to the Commission under Articles 20 and 21.

3. Paragraphs 1 and 2 shall apply to information collected as from the beginning of the second calendar year after the entry into force of the implementing measures referred to in Article 28(2).’

16 Article 31 of that directive, entitled ‘Repeal and transitional provisions’, provides in paragraph 1:

‘Directives 96/62/EC, 1999/30/EC, 2000/69/EC [of the European Parliament and of the Council of 16 November 2000 relating to limit values for benzene and carbon monoxide in ambient air (OJ 2000 L 313, p. 12)] and 2002/3/EC [of the European Parliament and of the Council of 12 February 2002 relating to ozone in ambient air (OJ 2002 L 67, p. 14)] shall be repealed as from 11 June 2010, without prejudice to the obligations on the Member States relating to time limits for transposition or application of those Directives.

…’

17 Article 33 of Directive 2008/50, entitled ‘Transposition’, states in paragraph 1:

‘Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 11 June 2010. They shall forthwith communicate to the Commission the text of those measures.

…’

18 In accordance with Article 34 of Directive 2008/50, entitled ‘Entry into force’, that directive entered into force on the day of its publication in the *Official Journal of the European Union*, that is on 11 June 2008.

19 Annex XI to Directive 2008/50 is entitled ‘Limit values for the protection of human health’. According to that annex, the daily value for PM_{10} not to be exceeded more than 35 times a calendar year is 50 $\mu g/m^3$, and the annual limit value is 40 $\mu g/m^3$ per calendar year. Annex XI states that the date on which those limit values had to be met was 1 January 2005.

Pre-litigation procedure

20 On 14 April 2009, the Republic of Bulgaria notified the Commission, pursuant to Article 22(2) of Directive 2008/50, of a request for an exemption from the obligation to apply the PM_{10} limit values until 11 June 2011. By decision of 11 December 2009, the Commission raised an objection to that request, on the basis of Article 22(4) of that directive.

21 After adopting that decision, the Commission, taking the view that the Republic of Bulgaria had failed to fulfil its obligations under Article 13 of Directive 2008/50, sent that Member State a letter of formal notice on 1 October 2010.

22 On 18 February 2011, the Republic of Bulgaria, in response to that letter of formal notice, did not deny that it had failed to fulfil its obligations under Article 13 of Directive 2008/50. It stated that, during 2007 and 2008, the exceedances of the limit values for PM_{10} concentrations had been recorded in the Bulgarian zones and agglomerations, with exceptions for certain municipalities, and it analysed the causes of those exceedances in its response.

23 By letter of 9 June 2011, the Republic of Bulgaria notified the Commission of a second request for an exemption from the obligation to apply the limit values for PM_{10} under Article 22(2) of Directive 2008/50 ('the notification of 9 June 2011'). By letter of 11 July 2011, the Commission replied that since that request had been lodged on 10 June 2011, the nine-month period laid down in the second subparagraph of Article 22(4) of Directive 2008/50 for the Commission to carry out its assessment would expire well after the deadline referred to in Article 22(2) of that directive, that is after 11 June 2011. The Commission further stated that in order to carry out a full assessment, it would need that nine-month period and that, in order to maintain the effectiveness of Directive 2008/50 and ensure legal certainty, adopting a decision after 11 June 2011, which would mean assessing the request in relation to a period in the past, was impossible.

24 On 25 January 2013, the Commission sent the Republic of Bulgaria an additional letter of formal notice, taking the view that it had infringed both Article 13 of Directive 2008/50 and Article 23(1) of that directive. In that regard, the Commission relied on the non-compliance with the limit values for PM_{10} concentrations in the zones and agglomerations of that Member State from 2007 to 2011 inclusive, with the exception of the zone BG0003 AG Varna, where the annual limit value for PM_{10} concentrations had been complied with in 2009.

25 By letter of 1 April 2013, supplemented by a letter of 2 September 2013, the Republic of Bulgaria stated in response to the Commission that the data communicated showed a downward trend in the exceedances of the limit values for PM_{10} concentrations. The Republic of Bulgaria stated that it had drawn up and adopted appropriate measures in order to comply with Article 13 of Directive 2008/50.

26 By letter of 11 July 2014, received on the same date, the Commission issued a reasoned opinion in which it complained that the Republic of Bulgaria had failed to comply with its obligations under the provisions of Article 13(1) of, in conjunction with Annex XI to, Directive 2008/50 and Article 23(1) of that directive, as a result of the failure to comply, first, with the daily and annual limit values for PM_{10} concentrations in the zones and agglomerations BG0001 AG Sofia, BG0002 AG Plovdiv, BG0004 North Bulgaria, BG0005 South-West Bulgaria and BG0006 South-East Bulgaria from 2007 until 2012 at least and, secondly, with the daily limit value in zone BG0003 AG Varna, from 2007 until 2012 at least and with the annual limit value in 2007 and 2008 and from 2010 until 2012 at least ('the reasoned opinion of 11 July 2014'). The Commission also called upon the Republic of Bulgaria to take the necessary measures to comply with that reasoned opinion within two months of its receipt.

27 By letter of 8 September 2014 in response to that reasoned opinion, the Republic of Bulgaria did not deny that the limit values for PM_{10} concentrations had been exceeded in the zones and agglomerations indicated. In that regard, it submitted data on the daily and annual PM_{10} concentrations at the level of municipalities, comparing the data for the year 2013 with that for the years 2012 and 2011, which allegedly show an improvement in the average values.

28 On 2 June 2015, the Republic of Bulgaria sent the Commission an additional response to the reasoned opinion of 11 July 2014, maintaining that there was a downward trend on its territory both of the number of times in which the limit values for PM_{10} concentrations were exceeded and of the daily and annual PM_{10} concentrations in a large number of the air quality measuring points.

29 However, in the Commission's view, the annual report on air quality for 2013 submitted by the Republic of Bulgaria, in accordance with Article 27 of Directive 2008/50, confirmed that the limit values for PM_{10} concentrations were not complied with in that year either, in the whole of the six zones and agglomerations indicated in the reasoned opinion of 11 July 2014.

30 In those circumstances, the Commission has brought the present action.

The action

The first complaint, alleging an infringement of the provisions of Article 13(1) in conjunction with Annex X1 to Directive 2008/50

Admissibility of the first complaint

– *Arguments of the parties*

31 The Republic of Bulgaria contends, in its defence, that the first complaint is inadmissible on the ground that the Commission has extended the subject matter of the dispute as defined in the pre-litigation stage.

32 First of all, as regards the provisions of Article 13(1) of, in conjunction with Annex XI to, Directive 2008/50, the additional letter of formal notice of 25 January 2013 refers to the years 2007 to 2011. Next, the reasoned opinion of 11 July 2014 relates to the period from the year 2007 to the year '2012 at least'. Lastly, the application refers to the year 2007 until the year '2013 inclusive at least'.

33 In addition, as regards the period referred to in the first complaint, the present action includes imprecise expressions, such as the Republic of Bulgaria 'continues to fail to fulfil' its obligations. In those circumstances, the absence of an indispensable element from the content of the application initiating proceedings, such as the period during which the Republic of Bulgaria — according to the Commission's assertions — has infringed European Union law, does not satisfy the requirements of coherence, clarity and precision, as outlined in the judgment of 15 November 2012, *Commission* v *Portugal* (C-34/11, EU:C:2012:712, paragraph 47).

34 The Commission submits, in its reply, that it is against the purpose, spirit and letter of Directive 2008/50 to overlook the period after the reasoned opinion of 11 July 2014, a period in which the infringement of the provisions of Article 13(1) of, in conjunction with Annex XI to, Directive 2008/50 continued and has been confirmed by new data.

35 In the Commission's view, the annual report on air quality for 2014 submitted by the Republic of Bulgaria in accordance with Article 27 of Directive 2008/50 shows that the limit values for PM_{10} concentrations were also exceeded in relation to that year. Consequently, account should now be taken of the period from 2007 to '2014 inclusive at least'. In that regard, the subject matter of the dispute has not been altered or extended and the Republic of Bulgaria cannot maintain that it was unable to understand that subject matter or that it did not have possibility of defending itself.

36 The Republic of Bulgaria refers, in its rejoinder, to the provisional data stemming from the measures on air quality as regards 2015.

– *Findings of the Court*

37 In accordance with the Court's settled case-law, the subject matter of an action under Article 258 TFEU for failure to fulfil obligations is determined by the Commission's reasoned opinion, so that the action must be based on the same grounds and pleas as that opinion (see judgments of 8 July 2010, *Commission* v *Portugal*, C-171/08, EU:C:2010:412, paragraph 25, and of 13 February 2014, *Commission* v *Bulgaria*, C-152/12, not published, EU:C:2014:82, paragraph 30).

38 In the present case, in the context of this action, as in the reasoned opinion of 11 July 2014, the Commission submits that the daily and annual limit values for PM_{10} concentrations, as provided for in the provisions of Article 13(1) of, in conjunction with Annex XI to, Directive 2008/50, have been exceeded.

39 Consequently, it must be found that, as regards the first complaint, the present action is based on the same grounds and pleas as the reasoned opinion of 11 July 2014.

40 In addition, it is apparent from the Court's case-law that the question of whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in the Member State at the end of the period laid down in the reasoned opinion (judgments of 10 April 2003, *Commission* v *Germany*, C-20/01 and C-28/01, EU:C:2003:220, paragraph 32; of 6 October 2009, *Commission* v *Spain*, C-562/07, EU:C:2009:614, paragraph 23; and of 1 December 2016, *Commission* v *Luxembourg*, C-152/16, not published, EU:C:2016:919, paragraph 20).

41 In the present case, the date of expiry of the period laid down in the reasoned opinion of 11 July 2014, which was received on the same day by the Republic of Bulgaria, was set at 11 September 2014.

42 However, it is also apparent from the Court's case-law that in so far as the action seeks to raise a systematic and consistent failure to comply with the provisions of Article 13(1) of, in conjunction with Annex XI to, Directive 2008/50, the production of additional evidence intended, at the stage of proceedings before the Court, to support the proposition that the failure thus alleged is general and consistent cannot be ruled out in principle (see, to that effect, judgments of 26 April 2005, *Commission* v *Ireland*, C-494/01, EU:C:2005:250, paragraph 37; of 22 December 2008, *Commission* v *Spain*, C-189/07, not published, EU:C:2008:760, paragraph 29; and of 11 July 2013, *Commission* v *Netherlands*, C-576/10, EU:C:2013:510, paragraph 29).

43 The Court, in particular, has already stated that the subject matter of an action for failure to fulfil obligations may extend to events which took place after the reasoned opinion, provided that they are of the same kind as the events to which the opinion referred and constitute the same conduct (see, to that effect, judgments of 22 March 1983, *Commission* v *France*, 42/82, EU:C:1983:88, paragraph 20; of 22 December 2008, *Commission* v *Spain*, C-189/07, not published, EU:C:2008:760, paragraph 30; and of 15 March 2012, *Commission* v *Cyprus*, C-340/10, EU:C:2012:143, paragraph 37).

44 In the present case, the Republic of Bulgaria submitted to the Commission, in accordance with Article 27 of Directive 2008/50, the annual report on air quality for 2014, which related, in particular, to the compliance with the provisions of Article 13(1) of, in conjunction with Annex XI to, Directive 2008/50. The data in that report are set out in the annex to the Republic of Bulgaria's defence.

45 In its reply, the Commission relied on those data in order to argue that the first complaint related to the period 'up to and including 2014 at least'.

46 While the data on air quality for 2014 amount to events which took place after the reasoned opinion of 11 July 2014, those events are of the same kind as those to which the opinion referred and constitute the same conduct.

47 Consequently, those data, which came to the Commission's knowledge after the reasoned opinion of 11 July 2014 was issued, could legitimately be mentioned by it in finding that the Republic of Bulgaria had failed to comply with the provisions of Article 13(1) of, in conjunction with Annex XI to, Directive 2008/50, also in relation to 2014.

48 In those circumstances, the mere fact that the Commission does not refer to a fixed, specific date to indicate until what point the Republic of Bulgaria failed to fulfil its obligations under the provisions of Article 13(1) of, in conjunction with Annex XI to, Directive 2008/50, is insufficient to find that the first complaint is inadmissible as a whole.

49 It must be added that the Republic of Bulgaria provided, in the annex to its rejoinder, the data on the daily and annual PM_{10} concentrations for part of 2015. However, those data at that stage did not relate to 2015 as a whole and were still provisional. Consequently, there is no need to take account of them in the context of the present action.

50 In addition, since the Court may consider of its own motion whether the conditions laid down in Article 258 TFEU for an action for failure to fulfil obligations to be brought are satisfied (see judgments of 15 January 2002, *Commission* v *Italy*, C-439/99, EU:C:2002:14, paragraph 8, and of 22 September 2016, *Commission* v *Czech Republic*, C-525/14, EU:C:2016:714, paragraph 14), it must be ascertained whether, by its first complaint, the Commission is entitled to declare that the Republic of Bulgaria failed to fulfil its obligations as from 2007.

51 In accordance with Article 34 of Directive 2008/50, that directive, which is the only directive referred to by the Commission in its first complaint, entered into force on 11 June 2008, that is after the date from which the Commission asks the Court to find an infringement. In addition, under Article 33(1) of Directive 2008/50, the Member States had to bring into force the laws, regulations and administrative provisions necessary to comply with that directive before 11 June 2010.

52 However, according to the Court's case-law, the Commission has standing to seek a declaration that a Member State has failed to fulfil obligations which were created in the original version of an EU measure, subsequently amended or repealed, and which were maintained in force under the provisions of a new EU measure. Conversely, the subject matter of the dispute cannot be extended to obligations arising under new provisions which do not correspond to those arising under the original version of the measure concerned, for otherwise it would constitute a breach of the essential procedural requirements of infringement proceedings (judgments of 24 May 2011, *Commission* v *Portugal*, C-52/08, EU:C:2011:337, paragraph 42, and of 10 September 2015, *Commission* v *Poland*, C-36/14, not published, EU:C:2015:570, paragraph 24).

53 In the present case, it is apparent from the provisions of Article 5 in conjunction with Annex III to Directive 1999/30 that, as regards the stage-1 periods, from 1 January 2005 until 31 December 2009, the daily value not to be exceeded more than 35 times per calendar year was 50 $\mu g/m^3$ and the annual value not to be exceeded was 40 $\mu g/m^3$ per calendar year.

54 It is not disputed that those obligations were maintained in the provisions of Article 13(1) of, in conjunction with Annex XI to, Directive 2008/50. That annex states that those limit values have been imposed since 1 January 2005.

55 In the light of the foregoing, it must be found that the complaint alleging an infringement of the provisions of Article 13(1) of, in conjunction with Annex XI to, Directive 2008/50 is admissible for the period from 2007 to 2014 inclusive.

The merits of the first complaint

– Arguments of the parties

56 The Commission submits, in its application, that exceeding the limit values for PM_{10} concentrations in itself constitutes an infringement of the provisions of Article 13(1) of, conjunction with Annex XI to, Directive 2008/50.

57 It is apparent from the annual reports on air quality, submitted by the Republic of Bulgaria from 2008 onwards, that the daily and annual limit values for PM_{10} concentrations were exceeded systematically and continuously throughout the territory of that Member State, that is in the zones and agglomerations BG0001 AG Sofia, BG0002 AG Plovdiv, BG0003 AG Varna, BG0004 North Bulgaria, BG0005 South-West Bulgaria and BG0006 South-East Bulgaria, from 2007 onwards, with the exception of the zone BG0003 AG Varna where in 2009 the annual limit value was complied with.

58 Those exceedances were not disputed by the Republic of Bulgaria in its response to the reasoned opinion of 11 July 2014. In addition, for numerous air quality measuring points there is no downward trend apparent from the data provided concerning the number of days in which the annual limit value for PM_{10} concentrations was exceeded.

59 The Republic of Bulgaria contends that on 9 June 2011 it notified the Commission of a request, under Article 22 of Directive 2008/50, for an exemption from the obligation to apply the PM_{10} limit values, to which the Commission replied that adopting a decision after 11 June 2011, the date referred to in Article 22(2), which would mean assessing that request for a period in the past, was impossible.

60 According to the Republic of Bulgaria, no deadline is laid down for notifications by a Member State under Article 22 of Directive 2008/50. In its view, the Commission was, therefore, obliged to examine the notification of 9 June 2011 and to adopt a retroactive decision.

61 In refusing to adjudicate on the notification of 9 June 2011, it is contended that the Commission infringed its obligation to cooperate in good faith stemming from Article 4(3) TEU and, therefore, an infringement of the provisions of Article 13(1) of, in conjunction with Annex XI to, Directive 2008/50 is not established.

62 As regards the exceedances of the daily and annual limit values for PM_{10} concentrations, the Republic of Bulgaria notes the trend for the reduction of PM_{10} in ambient air in recent years in Bulgaria.

63 In that regard, in particular, it states that 28 of the 37 air quality measuring points recorded a reduction in the average annual concentration of PM_{10}. Likewise, 29 of the 37 air quality measuring points recorded a reduction in the number of exceedances of the daily limit values between 2011 and 2015.

64 The Republic of Bulgaria further submits that its efforts to reduce PM_{10} levels are hindered by its socio-economic situation. PM_{10} emissions are difficult to reduce because of the sources of pollution such as domestic heating and road transport. Consequently, wood and coal are used in huge

quantities for heating during the winter period because of the economic difficulties of a large part of the Bulgarian population. In particular, the percentage of the population which has severe difficulty in meeting its basic monthly expenditure, for 2013, stood at 32.9% for the Republic of Bulgaria, whereas that percentage was 12.2% for the 28 Member States as a whole.

65 In its reply, the Commission notes that it received the notification of 9 June 2011 only two days before the period laid down in Article 22(2) of Directive 2008/50, namely 11 June 2011, expired. It has no power to extend that period for compliance with the limit values for PM_{10} concentrations, nor to approve retroactively a situation not meeting the requirements of that directive.

– *Findings of the Court*

66 As regards the assessment of the merits of the first complaint, the Court points out that, as set out in Article 1(1) of Directive 2008/50, that directive lays down measures aimed at defining and establishing objectives for ambient air quality designed to avoid, prevent or reduce harmful effects on human health and the environment as a whole.

67 In that context, the first subparagraph of Article 13(1) of that directive provides that the Member States must ensure that, throughout their zones and agglomerations, levels of PM_{10}, in particular, in ambient air do not exceed the limit values laid down in Annex XI to the directive.

68 The procedure provided for in Article 258 TFEU presupposes an objective finding that a Member State has failed to fulfil its obligations under the FEU Treaty or secondary legislation (see judgments of 1 March 1983, *Commission* v *Belgium*, 301/81, EU:C:1983:51, paragraph 8; of 19 December 2012, *Commission* v *Italy*, C-68/11, EU:C:2012:815, paragraph 62; and of 4 September 2014, *Commission* v *Greece*, C-351/13, not published, EU:C:2014:2150, paragraph 23).

69 Exceeding the limit values is, therefore, sufficient for a finding to be made that there has been an infringement of the provisions of Article 13(1) in conjunction with Annex XI to Directive 2008/50 (see, to that effect, judgments of 10 May 2011, *Commission* v *Sweden*, C-479/10, not published, EU:C:2011:287, paragraphs 15 and 16, and of 15 November 2012, *Commission* v *Portugal*, C-34/11, EU:C:2012:712, paragraphs 52 and 53).

70 In that regard, an analysis which proposes that a Member State would have entirely satisfied its obligations under the second subparagraph of Article 13(1) of Directive 2008/50 merely because an air quality plan has been established, cannot be accepted (see, to that effect, judgment of 19 November 2014, *ClientEarth*, C-404/13, EU:C:2014:2382, paragraph 42).

71 In the present case, the data from the annual air quality reports submitted by the Republic of Bulgaria show that that Member State exceeded the daily and annual limit values for PM_{10} concentrations in the zones and agglomerations BG0001 AG Sofia, BG0002 AG Plovdiv, BG0003 AG Varna, BG0004 North Bulgaria, BG0005 South-West Bulgaria and BG0006 South-East Bulgaria from 2007 until 2014 inclusive, with the exception of the annual limit value in the zone BG0003 AG Varna in 2009, which it does not indeed dispute.

72 As regards the Republic of Bulgaria's argument that, following its notification of 9 June 2011, it should have benefited from the application of Article 22(2) of Directive 2008/50, and that, in refusing to examine its request, the Commission infringed its obligation to cooperate in good faith stemming from Article 4(3) TEU, it must be held — as the Advocate General essentially found in point 59 of her Opinion — that the Commission's response to the Republic of Bulgaria, according to which the latter's request was too late in the light of the deadline of 11 June 2011 referred to in Article 22(2) of that directive, involved an objection by the Commission under Article 22(4) of that directive, which has not been disputed by the Republic of Bulgaria.

73 Such an objection by the Commission, which was correctly raised given that the request submitted by the Republic of Bulgaria was manifestly too late, is sufficient to preclude (i) the application of the conditional exemption provided for in Article 22 of Directive 2008/50 and thus (ii) the failure on the part of the Commission to fulfil its obligation to cooperate in good faith stemming from Article 4(3) TEU.

74 In those circumstances, it must be found that the Republic of Bulgaria was not exempted from the obligation to comply with the limit values until 11 June 2011.

75 As regards the Republic of Bulgaria's argument that its efforts to reduce PM_{10} levels are hindered by its socio-economic situation, it is to be noted that, as provided for in Annex III to Directive 1999/30, the date from which the daily and annual limit values for PM_{10} concentrations had to be met was 1 January 2005. That obligation applied to the Republic of Bulgaria on the day of its accession to the European Union, that is on 1 January 2007.

76 When it has been objectively found that a Member State has failed to fulfil its obligations under the FEU Treaty or secondary law, it is irrelevant whether the failure to fulfil obligations is the result of intention or negligence on the part of the Member State responsible, or of technical difficulties encountered by it (see judgments of 1 October 1998, *Commission* v *Spain*, C-71/97, EU:C:1998:455, paragraph 15, and of 4 September 2014, *Commission* v *Greece*, C-351/13, not published, EU:C:2014:2150, paragraph 23).

77 Consequently, Republic of Bulgaria's argument relating to its socio-economic situation cannot be accepted.

78 In those circumstances, the first complaint relied on by the Commission must be upheld.

The second complaint, alleging an infringement of Article 23(1) of Directive 2008/50

Admissibility of the second complaint

– Arguments of the parties

79 The Republic of Bulgaria contends that, as regards the complaint alleging an infringement of Article 23(1) of Directive 2008/50, the form of order sought in the application indicates not a period during which that infringement occurred, but only that there was a failure to fulfil obligations and that that 'infringement is still continuing'. Consequently, as for the first complaint, the Commission does not satisfy the requirements of coherence, clarity and precision set out by the Court, in particular in the judgment of 15 November 2012, *Commission* v *Portugal* (C-34/11, EU:C:2012:712, paragraphs 46 to 48).

80 The Commission states that as regards the second complaint, the failure to designate a specified period stems from the fact that the obligation of the Member State concerned to adopt appropriate measures in order to keep the exceedance period as short as possible, in accordance with Article 23(1) of Directive 2008/50, arises at the time of the first infringement of the obligations stemming from Article 13 of that directive and continues as long as that Member State has not brought to an end the exceedance of the limit values for PM_{10} concentrations.

– *Findings of the Court*

81 In accordance with Article 120(c) of the Rules of Procedure of the Court of Justice and the related case-law, an application initiating proceedings must state the subject matter of the proceedings, the pleas in law and arguments relied on and a summary of those pleas in law. That statement must be sufficiently clear and precise to enable the defendant to prepare his defence and the Court to rule on the application. It is, therefore, necessary for the essential points of fact and of law on which a case is based to be indicated coherently and intelligibly in the application itself and for the form of order to be set out unambiguously so that the Court does not rule *ultra petita* or fail to rule on a complaint (see, in particular, judgments of 15 June 2010, *Commission* v *Spain*, C-211/08, EU:C:2010:340, paragraph 32, and of 22 September 2016, *Commission* v *Czech Republic*, C-525/14, EU:C:2016:714, paragraph 16).

82 In that regard, it is to be noted that, as provided for in the second subparagraph of Article 23(1) of Directive 2008/50, in the event of exceedances of the limit values for PM_{10} concentrations for which the attainment deadline is already expired, the air quality plans must set out appropriate measures, so that the exceedance period can be kept as 'short as possible'.

83 The provision establishes, therefore, a direct link between, first, the exceedance of the limit values for PM_{10} concentrations such as those laid down in the provisions of Article 13(1) of, in conjunction with Annex XI to, Directive 2008/50 and, secondly, the drawing up of such plans.

84 It is apparent from paragraph 55 above that, in the present case, the complaint alleging an infringement of the provisions of Article 13(1) of, in conjunction with Annex XI to, Directive 2008/50 is admissible for the period up to and including the year 2014.

85 Admittedly, as regards the second complaint, the Commission did not refer to specified dates concerning the period in which the Republic of Bulgaria is alleged to have failed to fulfil its obligations under Article 23(1) of Directive 2008/50.

86 However, because of the direct link with the alleged infringement of the provisions of Article 13(1) of, in conjunction with Annex XI to, Directive 2008/50, it must be found that the complaint alleging an infringement of Article 23(1) of that directive also relates to the period up to and including the year 2014.

87 In addition, as regards the date from which the second complaint is allegedly established, it is apparent from the case-law cited in paragraph 52 above that the subject matter of the dispute cannot be extended to obligations arising under new provisions which do not correspond to those arising under the original version of the measure concerned.

88 In the present case, Article 5 of Directive 1999/30, read in conjunction with Article 8 of Directive 96/62, did not expressly lay down a time limit for the action plans to be drawn up. In that regard, as the Commission submits, Directive 96/62 simply required Member States to adopt, within a reasonable time, measures designed to bring air quality into line with the limit values for PM_{10} concentrations.

89 By contrast, the second subparagraph of Article 23(1) of Directive 2008/50 provides that, in the event of exceedances of the limit values for PM_{10} concentrations for which the attainment deadline is already expired, the air quality plans must set out appropriate measures, so that the exceedance period can be kept as 'short as possible'.

90 In those circumstances, by that requirement to comply with as short as possible an exceedance period, that provision lays down an obligation which does not correspond to one arising under the earlier EU legislation, as the Commission states itself in its application.

91 In addition, the date from which the Member States had to comply with Article 23(1) of Directive 2008/50 follows from the very wording of that directive. As set out in Article 33 of the directive, the Member States had to bring into force the laws, regulations and administrative provisions necessary to comply with that directive before 11 June 2010.

92 Consequently, as the Advocate General observed in point 91 of her Opinion, the infringement of Article 23(1) of Directive 2008/50 may be established only as from 11 June 2010.

93 Consequently, the complaint alleging an infringement of Article 23(1) of Directive 2008/50 is admissible as regards the period from 11 June 2010 to the year 2014 inclusive.

The merits of the second complaint

– Arguments of the parties

94 The Commission submits that when a Member State infringes Article 13(1) of Directive 2008/50 and, following that infringement, that Member State — as occurred in the present case with the Republic of Bulgaria — failed for at least seven consecutive years to provide, in its air quality plans, for all the measures necessary in order to achieve compliance, it also fails to fulfil its obligations under Article 23(1) of that directive, that is, in particular, it fails to ensure that the exceedance period is kept as short as possible.

95 The Commission further submits that the national measures described by the Republic of Bulgaria in its replies to the reasoned opinion of 11 July 2014 have not yet been applied or have begun to be applied, but their results are not demonstrated, which proves that those measures are insufficient. As regards the local measures, even if an improvement had been observed concerning the number of exceedances of the daily and annual limit values for PM_{10} concentrations in the majority of the municipalities, the situation remained, as at the date on which the present action was brought, one of continuous exceedance in each of the six Bulgarian zones and agglomerations.

96 Consequently, in the Commission's view, those measures are insufficient or inappropriate for keeping the exceedance period 'as short as possible' within the meaning of Article 23(1) of Directive 2008/50.

97 The Republic of Bulgaria contends that it was obliged, in the context of an action plan in the short term, to take measures appropriate to minimising the risk of exceeding the limit values for PM_{10} concentrations, but that the period in which it had to ensure that the exceedance period for those limit values was kept 'as short as possible' varies depending on the specific circumstances and that that period was not indicated to it by the Commission.

98 In addition, since the third subparagraph of Article 23(1) of Directive 2008/50 provides that the plans must be communicated to the Commission no later than two years after the end of the year the first exceedance was observed, that two-year period should be taken into account in order to calculate what constitutes the 'shortest possible' exceedance period.

99 Furthermore, although the obligation to comply with the limit values for PM_{10} concentrations is governed by Article 13(1) of Directive 2008/50, the exceedance of those values is merely the precondition giving rise to the obligation in Article 23(1) of that directive. Consequently, the requirements for finding that that provision has been infringed are separate from those relating to the infringement of Article 13 of Directive 2008/50. However, the Commission does not refer to any specific arguments to demonstrate that there has been an infringement of the second subparagraph of Article 23(1) of Directive 2008/50.

100 As regards the measures adopted, all the infringing Bulgarian municipalities drew up and applied plans the ultimate objective of which was to comply with the provisions of Directive 2008/50 and which give rise to an improvement in the data relating to air quality. At the national level, the legislation was amended in December 2015 in order to speed up the process of improving ambient air quality. Several programmes relating, in particular, to urban public transport systems, the energy efficiency of buildings, the improvement of the urban environment, and rural development were adopted for the purposes of improving air quality. Similarly, measures were taken in order to improve the connection of dwellings to the gas distribution network.

101 Lastly, the Republic of Bulgaria contends that the implementation of those measures is still ongoing and that the new programmes include short-term, medium-term and long-term implementation timetables depending on the type of measures. As regards the number of exceedances of the limit values for PM_{10} concentrations and the average levels of exceedances, the improvement in the results is clear.

– *Findings of the Court*

102 It is apparent from the second subparagraph of Article 23(1) of Directive 2008/50 that in the event of exceedances of the limit values for PM_{10} concentrations for which the attainment deadline is already expired, the Member State concerned is required to draw up an air quality plan meeting certain requirements.

103 Accordingly, that plan must set out appropriate measures, so that the exceedance period can be kept as short as possible, and may additionally include specific measures designed to protect sensitive population groups, including children. In addition, in accordance with the third subparagraph of Article 23(1) of Directive 2008/50, that plan must incorporate at least the information listed in Section A of Annex XV and may also include measures pursuant to Article 24 of that directive. The plan must be communicated to the Commission without delay, but no later than two years after the end of the year the first exceedance was observed.

104 According to the Court's case-law, Article 23(1) of Directive 2008/50 has a general scope because it applies, without being limited in time, to breaches of any pollutant limit value established by that directive, after the deadline fixed for its application, whether that deadline is fixed by Directive 2008/50 or by the Commission under Article 22 of the directive (see judgment of 19 November 2014, *ClientEarth*, C-404/13, EU:C:2014:2382, paragraph 48).

105 In the context of the interpretation of Directive 96/62, the Court has held that while the Member States have a discretion, Article 7(3) of that directive includes limits on the exercise of that discretion which may be relied upon before the national courts, relating to the adequacy of the measures which must be included in the action plan with the aim of reducing the risk of the limit values and/or alert thresholds being exceeded and the duration of such an occurrence, taking into account the balance which must be maintained between that objective and the various opposing public and private interests (see judgment of 25 July 2008, *Janecek*, C-237/07, EU:C:2008:447, paragraphs 45 and 46).

106 As the Advocate General observed in point 96 of her Opinion, the same approach must be followed as regards the interpretation of Article 23(1) of Directive 2008/50. Consequently, the air quality plans may be adopted only on the basis of the balance between the aim of minimising the risk of pollution and the various opposing public and private interests.

107 Therefore, the fact that a Member State exceeds the limit values for PM_{10} concentrations is not in itself sufficient to find that that Member State has failed to fulfil its obligations under Article 23(1) of Directive 2008/50.

108 In those circumstances, it must be ascertained, on the basis of a case-by-case analysis, whether the plans drawn up by the Member State concerned comply with that provision.

109 In that regard, it follows from Article 23(1) of Directive 2008/50 that while Member States have a degree of discretion in deciding which measures to adopt, those measures must, in any event, ensure that the period during which the limit values are exceeded is as short as possible (judgment of 19 November 2014, *ClientEarth*, C-404/13, EU:C:2014:2382, paragraph 57).

110 The Republic of Bulgaria contends that in order to determine whether the condition that the exceedance period must be a short a possible has been fulfilled, account must be taken of the two-year period provided for in the third subparagraph of Article 23(1) of Directive 2008/50 for communicating the plans to the Commission after the end of the year the first exceedance was observed.

111 Such an argument cannot succeed.

112 It follows from the wording of Article 23(1) of Directive 2008/50 and from the broad logic of that provision that the obligation to keep the exceedance period for the limit values as short as possible is wholly separate from the obligation to communicate the plans to the Commission. Consequently, the third subparagraph of Article 23(1) of that directive does not confer any additional period on the Member State concerned for them to adopt appropriate measures and for those measures to take effect.

113 In the present case, as is apparent from paragraph 78 above, the Republic of Bulgaria failed to fulfil its obligations under the provisions of Article 13(1) of, in conjunction with Annex XI to, Directive 2008/50 in all the zones and agglomerations for eight consecutive years.

114 From 11 June 2010, the date on which the Republic of Bulgaria had to have brought into force the laws, regulations and administrative provisions necessary to comply with Directive 2008/50, in accordance with Article 33(1) of that directive, that Member State was, therefore, required to adopt and implement as swiftly as possible appropriate measures pursuant to Article 23(1) of that directive.

115 However, in 2014 the daily and annual limit values for PM_{10} concentrations throughout the six Bulgarian zones and agglomerations were again exceeded, that is more than three years after the expiry of the deadline for transposing Directive 2008/50. Those limit values were still, therefore, systematically and continuously exceeded in that Member State, notwithstanding its obligations under Directive 2008/50.

116 In addition, as the Republic of Bulgaria noted and as is apparent from paragraph 100 above, the national legislation was amended only in December 2015 in order to speed up the process of improving ambient air quality.

117 Such a situation proves of itself, without the need to examine in detail the content of the plans drawn up by the Republic of Bulgaria, that in the present case that Member State has not implemented appropriate and effective measures to keep the exceedance period for limit values for PM_{10} concentrations as 'short as possible', with the meaning of the second subparagraph of Article 23(1) of Directive 2008/50.

118 In those circumstances, the second complaint relied on by the Commission must be upheld.

119 In the light of the foregoing considerations, it must be found that:

— by exceeding the daily and annual limit values for PM_{10} concentrations systematically and continuously from 2007 until 2014 inclusive in the zones and agglomerations BG0001 AG Sofia, BG0002 AG Plovdiv, BG0004 North Bulgaria, BG0005 South-West Bulgaria and BG0006 South-East Bulgaria;

— by exceeding the daily limit value for PM_{10} concentrations systematically and continuously from 2007 until 2014 inclusive in zone BG0003 AG Varna and the annual limit value in 2007, 2008 and from 2010 to 2014 inclusive in zone BG0003 AG Varna,

the Republic of Bulgaria has failed to fulfil its obligations under the provisions of Article 13(1) of, in conjunction with Annex XI to, Directive 2008/50; and

— in view of the fact that the daily and annual limit values for PM_{10} concentrations in all of the abovementioned zones and agglomerations continued to be exceeded, the Republic of Bulgaria has failed to fulfil its obligations under the second subparagraph of Article 23(1) of that directive and in particular the obligation to keep the exceedance period as short as possible, as regards the period from 11 June 2010 to the year 2014 inclusive.

Costs

120 Under Article 138(1) 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 to be awarded against the Republic of Bulgaria and the latter has, in essence, been unsuccessful, the Republic of Bulgaria must be ordered to pay the costs.

121 Pursuant to Article 140(1) of those rules, which provides that Member States which have intervened in the proceedings are to bear their own costs, the Republic of Poland must be ordered to bear its own costs.

On those grounds, the Court (Third Chamber) hereby:

1. **Declares that:**

— **by exceeding the daily and annual limit values for PM_{10} concentrations systematically and continuously from 2007 until 2014 inclusive in the zones and agglomerations BG0001 AG Sofia, BG0002 AG Plovdiv, BG0004 North Bulgaria, BG0005 South-West Bulgaria and BG0006 South-East Bulgaria;**

— **by exceeding the daily limit value for PM_{10} concentrations systematically and continuously from 2007 until 2014 inclusive in the zone BG0003 AG Varna and the annual limit value in 2007, 2008 and from 2010 until 2014 inclusive in zone BG0003 AG Varna,**

— **the Republic of Bulgaria has failed to fulfil its obligations under the provisions of Article 13(1) of, in conjunction with Annex XI to, Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe, and**

— **in view of the fact that the daily and annual limit values for PM_{10} concentrations in all of the abovementioned zones and agglomerations continued to be exceeded, the Republic of Bulgaria has failed to fulfil its obligations under the second subparagraph of Article 23(1) of that directive and in particular the obligation to keep the exceedance period as short as possible, as regards the period from 11 June 2010 to the year 2014 inclusive;**

2. **Orders the Republic of Bulgaria to bear its own costs and to pay those incurred by the European Commission;**

3. **Orders the Republic of Poland to bear its own costs.**

[Signatures]