

Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

10 November 2020 (\*)

(Failure of a Member State to fulfil obligations – Environment – Directive 2008/50/EC – Ambient air quality – Article 13(1) and Annex XI – Systematic and persistent exceedance of limit values for microparticles (PM10) in certain Italian zones and agglomerations – Article 23(1) – Annex XV – Exceedance period to be ‘as short as possible’ – Appropriate measures)

In Case C-644/18,

ACTION for failure to fulfil obligations under Article 258 TFEU, brought on 13 October 2018,

**European Commission**, represented initially by G. Gattinara and K. Petersen, and subsequently by G. Gattinara and E. Manhaeve, acting as Agents,

applicant,

v

**Italian Republic**, represented by G. Palmieri, acting as Agent, and by F. De Luca and P. Gentili, avvocati dello Stato,

defendant,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta, Vice-President, J.-C. Bonichot, A. Arabadjiev, A. Prechal, N. Piçarra and A. Kumin (Rapporteur), Presidents of Chambers, E. Juhász, M. Safjan, D. Šváby, S. Rodin, F. Biltgen, K. Jürimäe, C. Lycourgos and P.G. Xuereb, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

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

gives the following

**Judgment**

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

- by having systematically and persistently exceeded the limit values for concentrations of particulate matter PM10 (‘the limit values for PM10’), and continuing to exceed them,
- as regards the daily limit value,

- from 2008 in the following zones: IT 1212 (Sacco Valley); IT 1215 (agglomeration of Rome); IT 1507 (former zone IT 1501, improvement zone – Naples and Caserta); IT 0892 (Emilia-Romagna, Pianura Ovest (Western Plain)); IT 0893 (Emilia-Romagna, Pianura Est (Eastern Plain)); IT 0306 (agglomeration of Milan); IT 0307 (agglomeration of Bergamo); IT 0308 (agglomeration of Brescia); IT 0309 (Lombardy, plain with a high level of urbanisation A); IT 0310 (Lombardy, plain with a high level of urbanisation B); IT 0312 (Lombardy, valley floor D); IT 0119 (Piedmont, plain); IT 0120 (Piedmont, high ground);
- from 2009 in the following zones: IT 0508 and IT 0509 (former zone IT 0501, agglomeration of Venice-Treviso); IT 0510 (former zone IT 0502, agglomeration of Padua); IT 0511 (former zone IT 0503, agglomeration of Vicenza); IT 0512 (former zone IT 0504, agglomeration of Verona); IT 0513 and IT 0514 (former zone IT 0505; zone A 1 – Veneto Province);
- from 2008 to 2013, and subsequently again from 2015 in zone IT 0907 (zone Prato-Pistoia);
- from 2008 to 2012, and subsequently again from 2014 in zones IT 0909 (zone Valdarno Pisano and Piana Lucchese) and IT 0118 (agglomeration of Turin);
- from 2008 to 2009, and subsequently again from 2011, in zones IT 1008 (zone Conca Ternana) and IT 1508 (former zone IT 1504 Benevento hilly coastal zone);
- in 2008, and subsequently again from 2011 in zone IT 1613 (Apulia – industrial zone);
- from 2008 to 2012, in 2014 and from 2016, in zone IT 1911 (agglomeration of Palermo), and
- as regards the annual limit value in the following zones: IT 1212 (Sacco Valley) from 2008 and without interruption at least until 2016; IT 0508 and IT 0509 (former zone IT 0501, agglomeration of Venice-Treviso) in 2009, 2011 and 2015; IT 0511 (former zone IT 0503, agglomeration of Vicenza), in 2011, 2012 and 2015; IT 0306 (agglomeration of Milan), IT 0308 (agglomeration of Brescia), IT 0309 (Lombardy, plain with a high level of urbanisation A) and IT 0310 (Lombardy, plain with a high level of urbanisation B) from 2008 until 2013 and from 2015; IT 0118 (agglomeration of Turin) from 2008 until 2012 and from 2015,

the Italian Republic has failed to fulfil its obligations under the provisions of Article 13 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

- declare that, by failing to adopt as from 11 June 2010 appropriate measures to ensure compliance with the limit values for PM10 in all those zones, the Italian Republic has failed to meet its obligations under Article 23(1) of Directive 2008/50, read alone or in conjunction with Section A of Annex XV to that directive, and in particular the obligation laid down in the second subparagraph of Article 23(1), to ensure that the period of exceedance of limit values is kept as short as possible.

## Legal context

### *Directive 96/62/EC*

- 2 Article 8 of Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management (OJ 1996 L 296, p. 55), 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.'

### *Directive 1999/30/EC*

3 Article 5 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), entitled 'Particulate matter', provided in paragraph 1:

'Member States shall take the measures necessary to ensure that concentrations of PM10 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.

...'

4 Annex III to that directive specified that, with regard to PM10 particulate matter, the date by which the limit values were to be met was 1 January 2005.

### *Directive 2008/50*

5 Directive 2008/50, which entered into force on 11 June 2008, replaced five pre-existing legislative acts, on ambient air quality assessment and management, inter alia Directives 96/62 and 1999/30, which were repealed with effect from 11 June 2010, as is apparent from Article 31 of Directive 2008/50.

6 Recitals 17 and 18 of Directive 2008/50 state:

'(17) The necessary [EU] measures to reduce emissions at source, in particular measures to improve the effectiveness of [EU] legislation on industrial emissions, to limit the exhaust emissions of engines installed in heavy duty vehicles, to further reduce the Member States' permitted national emissions of key pollutants and the emissions associated with refuelling of petrol cars at service stations, and to address the sulphur content of fuels including marine fuels should be duly examined as a priority by all institutions involved.

(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)].’

7 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 [EU] measures.’

8 Article 2 of that directive, entitled ‘Definitions’, provides, in paragraphs 5, 7 to 9 and 16 to 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;

...

7. “margin of tolerance” shall mean the percentage of the limit value by which that value may be exceeded subject to the conditions laid down in this directive;

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

9. “target value” shall mean a level fixed with the aim of avoiding, preventing or reducing harmful effects on human health and/or the environment as a whole, to be attained where possible over a given period;

...

16. “zone” shall mean part of the territory of a Member State, as delimited by that Member State for the purposes of air quality assessment and management;

17. “agglomeration” shall mean a zone that is a conurbation with a population in excess of 250 000 inhabitants or, where the population is 250 000 inhabitants or less, with a given population density per km<sup>2</sup> to be established by the Member States;

18. “PM10” shall mean particulate matter which passes through a size-selective inlet as defined in the reference method for the sampling and measurement of PM10, EN 12341, with a 50% efficiency cut-off at 10 µm aerodynamic diameter;

...’

9 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, PM10, lead, and carbon monoxide in ambient air do not exceed the limit values laid down in Annex XI.

...

Compliance with these requirements shall be assessed in accordance with Annex III.

The margins of tolerance laid down in Annex XI shall apply in accordance with Article 22(3) and Article 23(1).’

10 Article 20 of Directive 2008/50, entitled ‘Contributions from natural sources’, provides in paragraphs 1 and 2 thereof:

‘1. Member States shall transmit to the Commission, for a given year, lists of zones and agglomerations where exceedances of limit values for a given pollutant are attributable to natural sources. Member States shall provide information on concentrations and sources and the evidence demonstrating that the exceedances are attributable to natural sources.

2. Where the Commission has been informed of an exceedance attributable to natural sources in accordance with paragraph 1, that exceedance shall not be considered as an exceedance for the purposes of this directive.’

11 In accordance with Article 21(1) to (4) of that directive, that article being entitled ‘Exceedances attributable to winter-sanding or -salting of roads’, Member States may designate zones or agglomerations within which limit values for PM10 are exceeded in ambient air due to the re-suspension of particulates following winter-sanding or -salting of roads. Member States are to provide the necessary evidence to demonstrate that any exceedances are due to re-suspended particulates and that reasonable measures have been taken to lower the concentrations. Without prejudice to Article 20 of that directive, Member States need to establish the air quality plan provided for in Article 23 of the same directive only in so far as exceedances are attributable to PM10 sources other than winter-sanding or -salting of roads.

12 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 PM10 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 [EU] measures and planned [EU] 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.'

13 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.

Where air quality plans must be prepared or implemented in respect of several pollutants, Member States shall, where appropriate, prepare and implement integrated air quality plans covering all pollutants concerned.'

14 Article 27 of that directive, 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:

...

(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).'
- 15 Under Annex XI to Directive 2008/50, entitled 'Limit values for the protection of human health', as regards PM10, the daily limit value is 50 µg/m<sup>3</sup>, which must not be exceeded more than 35 times in a calendar year, and the annual limit value is 40 µg/m<sup>3</sup>, which must not be exceeded.
- 16 As regards the information that must be included in plans relating to ambient air quality, within the meaning of Article 23 of that directive, Section A of Annex XV to that directive states inter alia:
- '8. Details of those measures or projects adopted with a view to reducing pollution following the entry into force of this directive:
- (a) listing and description of all the measures set out in the project;
  - (b) timetable for implementation;
  - (c) estimate of the improvement of air quality planned and of the expected time required to attain these objectives.'

### **Pre-litigation procedure**

- 17 After examining the reports provided by the Italian Republic on the development of PM10 concentrations in ambient air for the period from 2008 to 2012 in the zones under consideration, the Commission sent that Member State, on 11 July 2014, a letter of formal notice concerning the infringement of Articles 13 and 23 of Directive 2008/50 on account of the persistent exceedance of the limit values applicable to those concentrations during that period ('the initial letter of formal notice').
- 18 The Italian authorities requested an extension to the deadline for reply to that letter of formal notice, which was granted, and communicated their reply on 28 October 2014, without disputing the infringement of Article 13 of Directive 2008/50. By contrast, concerning the alleged infringement of Article 23 of that directive, they claimed that it had been necessary to carry out an assessment for each zone or agglomeration concerned.
- 19 Given that several zones of the Po basin were not included in the initial letter of formal notice and that the reports referred to in Article 27 of Directive 2008/50 for 2013 and 2014 had been sent late, the data relating to Piedmont, Sicily and Calabria for that period having only been communicated on 4 February 2016, the Commission, on receipt of that additional information, issued, on 16 June 2016, a supplementary letter of formal notice, in which it alleged persistent and continuous infringement of the limit values defined in Article 13 of that directive, and infringement of Article 23 of that directive.
- 20 After requesting and obtaining an extension to the deadline for reply to that supplementary letter of formal notice, the Italian authorities replied by letter of 20 September 2016, without disputing the infringement of Article 13 of Directive 2008/50. As regards the alleged infringement of Article 23 of that directive, they withdrew the arguments set out in their reply to the initial letter of formal notice, whilst providing, however, some updated information.
- 21 In the light of the replies of the Italian authorities referred to in paragraph 20 of the present judgment, the Commission issued, on 28 April 2017, a reasoned opinion, in which it invoked, in the first place, persistent and continuous failure to comply, for the period from 2008 to 2015, with the daily limit value for PM10 in the zones listed in the reasoned opinion, and with the annual limit value for PM10 in certain of those zones, in breach of the provisions of Article 13 of, in conjunction with Annex XI to, Directive 2008/50. As regards Sicily, the Commission stated in the reasoned opinion that the infringement of those provisions had persisted until at least 2014, since no information had been communicated for 2015.

- 22 In the second place, the Commission concluded that, for the zones listed in the reasoned opinion, the Italian Republic had failed to fulfil its obligations under Article 23 of Directive 2008/50, read either alone or in conjunction with Annex XV to that directive.
- 23 The Italian Republic replied to the reasoned opinion on 29 June 2017. On 15 September 2017, it provided additional information on the various air quality plans that the regions had modified, as well as on the measures that they were preparing to take to reduce the concentration levels of PM10 in ambient air.
- 24 Taking the view that the Italian Republic had still failed to remedy the infringements of EU law complained of, the Commission decided to bring, on 13 October 2018, the present action for failure to fulfil obligations.
- 25 The Italian Republic, pursuant to the third paragraph of Article 16 of the Statute of the Court of Justice of the European Union, requested that the Court sit in a Grand Chamber.

## **The action**

### ***The first complaint, alleging systematic and persistent infringement of the provisions of Article 13(1) of, in conjunction with Annex XI to, Directive 2008/50***

#### *Arguments of the parties*

- 26 By its first complaint, the Commission maintains that, given the exceedance of the daily limit value for PM10 since 2008, and at least until 2016, and of the annual limit value for PM10 since 2008 in the zones referred to in paragraph 1 of the present judgment, the Italian Republic has systematically and persistently infringed the obligations arising from Article 13(1) of Directive 2008/50, read in conjunction with Annex XI to that directive.
- 27 As a preliminary point, the Commission provides clarification as regards the temporal application of Directive 2008/50, maintaining that Article 13 of that directive had been infringed in certain Italian zones and agglomerations since 2008, even though that directive only entered into force on 11 June 2008 and under Article 33(1) of that directive, Member States were required to bring into force the laws, regulations and administrative provisions necessary to comply with it before 11 June 2010.
- 28 Referring to paragraphs 43 and 45 of the judgment of 22 February 2018, *Commission v Poland* (C-336/16, EU:C:2018:94), the Commission notes that Directive 2008/50 replaced, in accordance with recital 3 thereof, five EU acts, including Directive 1999/30 which specified the air quality limit values to be complied with as from 1 January 2005. The Court pointed out in particular in that regard that the provisions of Article 5 of, in conjunction with Annex III to, Directive 1999/30, which covered the period preceding the implementation of Directive 2008/50 were maintained in force under the provisions of Article 13(1) of, and Annex XI to, that directive, so that a complaint alleging an infringement of the latter provisions is also admissible for the periods from 1 January 2005 to 11 June 2010.
- 29 The Commission maintains that the Italian Republic did not, in any event, obtain any postponement of the deadline set for achieving the limit values for PM10 under Article 22 of Directive 2008/50, as noted in the reasoned opinion. Consequently, it was obliged to comply with the provisions of that directive concerning those limit values, without any exception.
- 30 Furthermore, the Commission maintains that the Court has previously held that the Italian Republic failed to fulfil its obligation to ensure that, for 2006 and 2007, concentrations of PM10 in ambient air did not exceed the daily and annual limit values laid down by Directive 1999/30 in many Italian zones and agglomerations (judgment of 19 December 2012, *Commission v Italy*, C-68/11, EU:C:2012:815, paragraphs 55 to 58 and 67). Therefore, the present action relates to continuous exceedance of the daily



and annual limit values for PM10 from 2008 until the expiry of the compliance deadline indicated in the reasoned opinion, that is, 28 June 2017.

- 31 Finally, having received data relating to 2017 which confirms that the daily and annual limit values for PM10 were still being exceeded in almost all the zones concerned, the Commission states that it intends to produce all those data during the procedure once they have been technically validated, together with additional evidence relating to events occurring after 28 June 2017, on the grounds that they are ‘of the same nature’ and ‘constitute the same conduct’ as those referred to in the reasoned opinion. Similarly, the Commission maintains that it has also provided data on PM10 concentration levels for 2016, which were submitted by the Italian authorities only on 15 September 2017, that is, after the deadline indicated in the reasoned opinion.
- 32 The Commission submits that it follows from the Court’s settled case-law that an objective finding that the limit values laid down for PM10 by the provisions of Article 13 of, in conjunction with Annex XI to, Directive 2008/50 have been exceeded is sufficient to conclude that those provisions have been infringed.
- 33 In the Commission’s view, examination of the annual reports provided by the Italian Republic under Article 27 of Directive 2008/50, summaries of which are annexed to its application, permit the conclusion that the daily and annual limit values for PM10 have been persistently exceeded in each of the 27 geographical zones examined. With the exception of certain years, those limit values have never been complied with, and their exceedance on the date on which the action for failure to fulfil obligations was brought is evidence of the persistent nature of that exceedance.
- 34 The Commission submits that it follows that the daily and annual limit values for PM10 have been systematically and persistently exceeded, the infringement being still ongoing in the zones referred to in paragraph 1 of the present judgment at the time when the action for failure to fulfil obligations was brought.
- 35 The Italian Republic denies that there has been any failure to fulfil its Treaty obligations.
- 36 First, it submits that an infringement of Article 13 of Directive 2008/50, read in conjunction with Annex XI thereto, cannot be inferred from mere exceedance of the daily or annual average limit values for PM10 over a number of years in a Member State. It submits in that regard that, contrary to the Commission’s claims, the principles laid down by the Court in similar cases do not permit the view that there is an automatic correlation between the exceedance of maximum concentration limits for polluting substances and a failure to comply with EU law, since the objective of that directive is to ensure a gradual reduction in the levels of exposure to harmful factors within the limits set by the directive.
- 37 According to the Italian Republic, it is not therefore possible to consider that that directive has been infringed – and, in the present case that it has failed to fulfil the obligation to bring the concentrations of PM10 within the maximum limits laid down in Annex XI – when examination of the historical data on concentrations of the harmful components shows a gradual, constant and significant reduction in concentration levels making it possible to achieve a level close to that laid down by the provisions of EU law.
- 38 According to a correct interpretation of Directive 2008/50, in the light of its wording, its scheme and its objectives, corroborated by the Commission’s statement in the annex to that directive, it is appropriate, in the view of the Italian Republic, always to read Article 13 of Directive 2008/50 in conjunction with the first and second subparagraphs of Article 23(1) of that directive, with the result that the only obligation on the part of the Member States in the event that the limit values referred to in Article 13 of, and Annex XI to, that directive are exceeded is to draw up air quality plans providing for appropriate measures so that those values are exceeded for as short a time as possible. There can therefore be no question of an infringement liable to be sanctioned under Article 258 TFEU, unless, where the limit values are exceeded, no air quality plans have been drawn up. However, that is not the case in the present situation. Thus, only

the second complaint raised by the Commission is relevant for the purposes of establishing any failure to fulfil the obligations laid down by Directive 2008/50.

- 39 According to the Italian Republic, the adaptation of air quality to the limits and objectives laid down constitutes a complex process, within which Member States' measures cannot be sporadic and must necessarily involve long-term plans. In the light of the range and interaction of sources of pollution, national measures should be supplemented by measures falling within the competence of the EU, in particular those relating to large combustion plants and industrial plants. Finally, that set of measures must not hinder economic development and should rather contribute to ensuring its sustainability.
- 40 In the second place and in the alternative, the Italian Republic maintains that the exceedance of the limit values referred to in Article 13 of Directive 2008/50 cannot be attributed solely to the Member State concerned. The variety of sources of air pollution means that the ability of a single Member State to affect those sources and lower the concentration of various pollutants, including PM10 particulate matter, beneath the limit values is relative. As regards the many sources of pollution, referred to in recital 18 to Directive 2008/50, competence to regulate pollutant emissions lies with the European Union, and not with the Member States.
- 41 Thus, although it follows from the Court's case-law that the procedure referred to in Article 258 TFEU presupposes an objective finding that the Member State has failed to fulfil its obligations, according to the Italian Republic, it must also be possible for that failure to be attributed objectively to the conduct of the national authorities and it must not arise from other causal factors, outside the Member States' sphere of competence. An action brought by the Commission can only be upheld if that institution provides proof of that exclusive attributability to the Member State concerned and not if any failure to comply with EU law derives from a multiplicity of factors, of which only some fall within the sphere of competence of that Member State.
- 42 Consequently, in the present case, the Italian Republic maintains that the Commission should have been required to find, first, that there was no influence of natural, external causal factors that the national authorities could not control, since they are unpredictable and inevitable, and, secondly, that there was no conduct on the part of third parties likely to affect the pursuit of the protection objectives underlying the legislative provisions alleged to have been infringed. In that regard, the Italian Republic refers to causal factors of natural origin that are completely beyond the control of the national authorities, in particular the mountainous configuration of certain Italian zones in association with the meteorological conditions prevailing in those zones, or factors of human origin and the interference of European policies that are independent of national policies. The Italian Republic refers, in that context, inter alia, to the EU policies on biomass and pollutant emissions, in particular the advantages granted to diesel vehicles and the setting of PM10 emissions by 'Eurodiesel' vehicles on the basis of theoretical models far removed from actual PM10 emissions, and agricultural policies, some of which, in the interests of reducing other emission sources, led to an increase in the PM10 emissions taken into consideration by Directive 2008/50, as confirmed by the reports in the case file.
- 43 Accordingly, in the view of the Italian Republic, the Commission has not adduced proof that the exceedance of the limit values determined by Directive 2008/50 may be attributed to the inadequacy of air quality plans concerned. If that institution was not required to adduce that proof, it would serve to render the Member State concerned automatically or objectively responsible, which would be unacceptable.
- 44 In the third place, the Italian Republic maintains, in the alternative, that the Commission errs in law in determining the maximum acceptable PM10 concentration limit, in so far as it uses the values of 50 µg/m<sup>3</sup> per day and 40 µg/m<sup>3</sup> per year as reference values, but does not take account of the margin of tolerance provided for in Articles 13 and 23 of, and Annex XI to, Directive 2008/50, read together. It follows from that joint reading that, when the limit values laid down by the provisions of Article 13 of, in conjunction with Annex XI to, that directive are exceeded, margins of tolerance may be applied pursuant to Article 23(1) of that directive. Given that the Member States are under the obligation to draw up air quality plans only when 'the levels of pollutants in ambient air exceed any limit value or target value, plus any

relevant margin of tolerance in each case', it is necessary to increase the limit value by the applicable margin of tolerance in order to ascertain whether the maximum values permissible under national law have been exceeded.

- 45 For PM10, that margin of tolerance is set at 50% per day and 20% per calendar year, with the result that EU law is not infringed if the maximum value, which results from the increase in the limit value following application of the coefficient provided for as a margin of tolerance, has not been exceeded. Consequently, in the present case, the Commission should have taken into consideration not the values of 50 µg/m<sup>3</sup> per day and 40 µg/m<sup>3</sup> per year, but rather the values of 75 µg/m<sup>3</sup> per day and 48 µg/m<sup>3</sup> per year.
- 46 The Commission, in the introductory part of its reply maintains, first of all, that the Italian Republic, in its defence, does not dispute the approach whereby the present procedure relates to a systematic and persistent failure to observe certain provisions of EU law and therefore, in some cases, concerns the persistent exceedance of limit values for PM10 over extended periods of time. That finding is confirmed by the fact that the Italian Republic refers to the limit values for PM10 for 2018.
- 47 As regards the argument that it is sufficient, in order to ensure that the obligations arising from Directive 2008/50 are fulfilled, that the reduction of PM10 concentration levels laid down in Directive 2008/50 be gradual, even if those levels remain above the limit values laid down for PM10 by that directive and that, accordingly, such exceedance would merely require the Member States to adopt an air quality plan, the Commission submits that that has no basis either in the wording of that directive or in the Court's case-law.
- 48 The Commission maintains, in that regard, that the limit values must be distinguished from target values, which must be reached over a given period, but only 'where possible' and provided that the corresponding measures do not entail disproportionate costs, according to the definition in Article 2(9) of Directive 2008/50, read in conjunction with Articles 16 and 17 of that directive. However, the present action does not concern those articles.
- 49 As regards the argument that the Italian Republic is not responsible for the exceedance of limit values for PM10 on account, inter alia, of the mountainous configuration of certain Italian territorial zones or on account of European policies having a significant effect on the formation of compounds harmful to health, the Commission contends that the obligation not to exceed those limit values is clearly an obligation to achieve a result that the Member States must fulfil, in accordance with Article 13 of Directive 2008/50. Reliance on factors specific to that Member State amounts to denying the existence of that obligation.
- 50 The Commission also maintains that any difficulties encountered in complying with the limit values for PM10, in certain parts of the national territory, were duly taken into account in recital 16 of Directive 2008/50, in so far as that recital refers to zones where conditions are 'particularly difficult' for which it is possible to postpone the deadline for compliance with the air quality limit values, provided that a request to that effect is submitted to the Commission along with a comprehensive plan to ensure compliance with the limit values by the revised deadline, in accordance with Article 22(1) and (3) of that directive. However, as regards the present procedure, the Italian Republic has never received any authorisation to postpone that deadline from the Commission.
- 51 The Commission maintains that the arguments put forward by the Italian Republic claiming that, in particular, EU policies on transport, energy and agriculture have contributed to the exceedance of the limit values for PM10 are also irrelevant. The Commission claims in that regard that, in a procedure for failure to fulfil obligations under Article 258 TFEU, it is necessary to establish merely whether a Member State has fulfilled an obligation laid down by a provision of EU law and not whether there are circumstances likely to have an effect on the failure to fulfil obligations in question.
- 52 As regards the reference made by the Italian Republic to the 'margin of tolerance' referred to in Articles 13, 22 and 23 of, and in Annex XI to, Directive 2008/50, the Commission disputes the interpretation of those provisions put forward by the Italian Republic, to the effect that, first, compliance with the air quality limit values must always include such a margin of tolerance and, secondly, that

inclusion is confirmed by the reference to that margin in those provisions, so that the directive is only infringed if it is established that the exceedance also includes that margin of tolerance.

53 The Commission maintains that those provisions must be interpreted in such a way that the application of a margin of tolerance applies only in the two scenarios referred to in Article 22(1) and (2) of Directive 2008/50, as expressly stated in paragraph 3 of that article.

54 That interpretation is confirmed by the wording of Article 23(1) of Directive 2008/50, which states that the concentration limit values are increased by ‘any relevant margin of tolerance in each case’, that is to say, not by a margin laid down by the EU legislature itself, but by the margin decided by the Commission, in accordance with Article 22(3) of that directive at the request of the Member State concerned.

55 Accordingly, the Commission maintains that, since it has given no express authorisation, pursuant to Article 22 of Directive 2008/50, a margin of tolerance may not be applied. Moreover, as regards PM10 concentrations, that margin of tolerance would constitute, in any event, a transitional measure which could only be applied until 11 June 2011, as is apparent from the wording of Article 22(2) of that directive. That provision therefore no longer has any legal effect. Furthermore, no margin of tolerance was granted to the Italian Republic under Article 22(3) and (4) of that directive.

56 As regards the merits of the first plea in law in the light of the relevant data, the Commission maintains that the Italian Republic merely states inter alia the extent of each exceedance as detected in the various measuring stations. In that regard, the Commission submits that, pursuant to Article 27(1) of Directive 2008/50, it is for the Member States to provide information on the exceedance of the limit values for PM10 and to indicate the geographical zones in which those values were exceeded. The fact that there are differences within a given zone between one measuring station and another has no significance, given that, in any event, the Member States are responsible for organising and managing the collection of data in such a way as to comply with the obligation set out in that provision, that is, by providing the Commission with the required information in due time. Having submitted this information, the Italian Republic cannot therefore challenge its content.

57 In addition, in so far as the Italian Republic intends to submit that the exceedance of certain limit values for PM10 is due to natural factors, it should have informed the Commission of that, in accordance with Article 20(1) of Directive 2008/50.

58 The Commission notes that the Italian Republic has referred on several occasions to alleged improvement and to likely downward trends in PM10 concentration levels in the various zones concerned. However, in reliance on the judgment of 22 February 2018, *Commission v Poland* (C-336/16, EU:C:2018:94, point 65), the Commission states that a possible partial downward trend highlighted by the data collected, which does not, however, result in compliance by the Member State concerned with the limit values which it is obliged to respect, cannot invalidate the finding of failure to fulfil obligations attributable to it.

59 Moreover, the Commission has produced, concerning the daily limit value for PM10, the updated data for 2017 in order to establish that, despite the fact that that value was complied with in zone IT 1911 (Palermo) and zone IT 1215 (agglomeration of Rome), those data do not invalidate the complaints relied on in the form of order sought in its application. In so far as, for the first zone, the failure to fulfil obligations is alleged ‘from 2016’, that is, at least during 2016, irrespective of the data for 2017 and for the second zone, in any event ‘from 2008’, the Commission maintains that the form of order sought in its application remains valid. It also maintains that it is apparent from that data that, in 2017, the daily limit value for PM10 was exceeded in the 25 other zones referred to in its application.

60 As regards the annual limit value for PM10, the Commission acknowledges that those values were complied with, in 2017, in zones IT 1212 (Sacco Valley), IT 0508 and IT 0509 (agglomeration of Venice-Treviso), IT 0511 (former zone IT 0503, agglomeration of Vicenza) and IT 0306 (agglomeration of Milan). However, such a finding does not affect the validity of its complaints. In so far as, in the first zone, the failure to fulfil obligations is alleged ‘until at least 2016’ and for the other three zones, in any event ‘from

2015', the form of order sought in its application remains valid. The Commission also submits that it is apparent from the data relating to 2017 that, in that year, the annual limit value for PM10 was exceeded in the four other zones referred to in its application, that is, zones IT 0308 (agglomeration of Brescia), IT 0309 (Lombardy, plain with a high level of urbanisation A), IT 0310 (Lombardy, plain with a high level of urbanisation B) and IT 0118 (agglomeration of Turin).

61 In its reply, the Italian Republic disputes, at the outset, that the judgment of 22 February 2018, *Commission v Poland* (C-336/16, EU:C:2018:94) is applicable in the present case on account of differences in the respective factual contexts, in particular in terms of the plans and adaptation deadlines concerned. It also disputes the Commission's finding that it adhered to the Commission's approach based on systematic and persistent failure to comply with the provisions of Directive 2008/50. In addition, nor does it agree with the Commission's argument concerning the scope of applicability of the margin of tolerance.

62 Next, while stressing that it does not deny the existence of an obligation to achieve a result imposed by Articles 13 and 23 of Directive 2008/50, the Italian Republic nevertheless considers that that obligation should be assessed with a focus on the gradual reduction of PM10 concentration levels in ambient air. Furthermore, it maintains that the Commission does not call into question its arguments concerning the decisive influence, of a causal nature, of European policies concerning agriculture, energy and transport, and concerning the very particular conditions of the topography and elevation of the national territory on the pursuit of the ambient air quality objectives.

63 Finally, the Italian Republic submits that the fact that the zones concerned by the present action account for just 17% of the entire national territory is significant in demonstrating that the complaints raised by the Commission do not apply to most of the national territory, thereby indicating that the environmental air quality in that Member State is good and consequently ruling out per se any infringement of Article 13 of Directive 2008/50, which can only be envisaged if the limit values for PM10 are exceeded throughout the national territory.

64 The Italian Republic submits in that regard that the differences in the values recorded between measuring stations in a single zone are, contrary to what the Commission maintains, relevant and that the number of alleged exceedances is, in any event, within the 'margin of tolerance' authorised under Article 23 of Directive 2008/50 or at least shows a downward trend, subject to minor fluctuations.

#### *Findings of the Court*

65 At the outset, it must be noted, in the first place, that the Commission maintains that the Italian Republic has failed, systematically and persistently, to fulfil its obligations under the provisions of Article 13 of, in conjunction with Annex XI to, Directive 2008/50, in the zones and agglomerations covered by the present action, from 1 January 2008 until the expiry of the deadline indicated in the reasoned opinion, that is, 28 June 2017. However, in so far as part of that period falls before the date on which the Member States had to bring into force the laws, regulations and administrative provisions necessary to comply with that directive, which was set as 11 June 2010, which is indeed before the date of its entry into force, that is, 11 June 2008, it must be stressed that the Court has previously stated that complaints based on those provisions are admissible also for the period from 1 January 2005 to 11 June 2010, since the obligations laid down by those provisions were created in the original version of Directive 1999/30, which was replaced by Directive 2008/50, in particular the provisions of Article 5 of Directive 1999/30 in conjunction with Annex III to that directive (see, to that effect, judgment of 5 April 2017, *Commission v Bulgaria*, C-488/15, EU:C:2017:267, paragraphs 50 to 55).

66 In the second place, it must be noted that, in order to support the proposition that the failure to fulfil obligations is of a consistent and general nature, the Commission relies, in its application, on the air quality data for 2016 submitted to it by the Italian Republic on 15 September 2017 and, in its reply, on the data for 2017. While those data thus constitute facts arising after the expiry of the deadline set out in the reasoned opinion, the fact remains that they are of the same kind as the facts to which the opinion referred and

constitute the same conduct, with the result that the subject matter of the present action may extend to them (see, to that effect, judgment of 5 April 2017, *Commission v Bulgaria*, C-488/15, EU:C:2017:267, paragraphs 42 to 47 and the case-law cited).

67 In the third place, in its reply, the Commission, having regard to the air quality data for 2017, clarified some of its complaints and, in accordance with the corrigendum to that submission, adapted some parts of the form of order sought. Therefore, with regard to the claims relating to exceedances of the annual limit value for PM10, the Commission states in that reply, read together with the corrigendum, that, in zones IT 0508 and IT 0509 (agglomeration of Venice-Treviso), exceedances took place in 2009, 2011 and 2015, in zone IT 1212 (Sacco Valley), from 2008 to 2016, in zone IT 0306 (agglomeration of Milan), from 2008 to 2013 and in 2015, and in zone IT 0511 (agglomeration of Vicenza), in 2011, 2012 and 2015. In the light of those updated data, it adds, moreover, that the same limit value was exceeded in zones IT 0308 (agglomeration of Brescia), IT 0309 (Lombardy, plain with a high level of urbanisation A) and IT 0310 (Lombardy, plain with a high level of urbanisation B) from 2008 to 2013 and in 2015 and 2017, and in zone IT 0118 (agglomeration of Turin) from 2008 to 2012 and in 2015 and 2017.

68 As regards exceedances of the daily limit value for PM10, the Commission submits that they can be observed in zone IT 1911 (agglomeration of Palermo) from 2008 to 2012 and in 2014 and 2016 and in zone IT 1215 (agglomeration of Rome) from 2008 up to and including 2016. The Commission maintains that the merits of the first plea in law of the action should therefore be analysed in the light of that information, since it merely seeks to set out in detail a complaint which the Commission had already made more generally in the application and, thus, does not alter the subject matter of the alleged failure to fulfil obligations and has no effect on the scope of the proceedings (see, to that effect, judgment of 4 June 2015, *Commission v Poland*, C-678/13, not published, EU:C:2015:358, paragraph 37 and the case-law cited).

69 Having made those preliminary observations, it should be noted 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. 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 PM10, in particular, in ambient air do not exceed the limit values laid down in Annex XI to that directive.

70 It should be borne in mind that the complaint alleging infringement of the obligation set out in the first subparagraph of Article 13(1) of Directive 2008/50 must be assessed taking into account the settled case-law according to which the procedure provided for in Article 258 TFEU is based on an objective finding that a Member State has failed to fulfil its obligations under the FEU Treaty or secondary legislation (judgments of 5 April 2017, *Commission v Bulgaria*, C-488/15, EU:C:2017:267, paragraph 68, and of 30 April 2020, *Commission v Romania (Exceedance of limit values for PM10)*, C-638/18, not published, EU:C:2020:334, paragraph 67 and the case-law cited).

71 The Court has thus previously stressed repeatedly that exceeding the limit values for PM10 in ambient air is in itself sufficient for a finding to be made that there has been an infringement of the provisions of Article 13(1) of, in conjunction with Annex XI to, Directive 2008/50 (judgments of 5 April 2017, *Commission v Bulgaria*, C-488/15, EU:C:2017:267, paragraph 69, and of 30 April 2020, *Commission v Romania (Exceedance of limit values for PM10)*, C-638/18, not published, EU:C:2020:334, paragraph 68, and the case-law cited).

72 In the present case, however, the data resulting from the annual air quality reports submitted by the Italian Republic under Article 27 of Directive 2008/50 show that, from 2008 to 2017 inclusive, the daily and annual limit values set for PM10 were very regularly exceeded in the zones referred to in paragraph 1 of the present judgment.

73 As regards, in particular, the number of exceedances of the daily limit value for PM10, it follows from those data that, in almost all of the 27 zones and agglomerations concerned by the present action, wherever

it happens that the maximum number of 35 exceedances of the limit value in a year is reached in a given year, that year is systematically preceded and followed by one or more years in which excessive exceedances of that value took place. In certain zones, following a year in which the daily limit value for PM10 was not exceeded more than 35 times, the number of exceedances may be double the number of exceedances detected in the last year having excessive exceedances. Similarly, as regards exceedances of the annual limit value for PM10, the years in which compliance with that value may be observed are interspersed with years of exceedance, with the PM10 concentration, following a year in which such compliance is detected, sometimes being even higher, in several of the zones concerned, than in the last year in which such an exceedance was detected.

74 Furthermore, it appears from the air quality data in the zones concerned by the present action for 2017 that, with the exception of two of the 27 zones and agglomerations in question, the daily limit value for PM10 was either exceeded again or continued to be exceeded more than 35 times during that year and, in the case of four out of the nine zones concerned by the present action, the annual limit value for PM10 was once again exceeded in that same year.

75 In those circumstances, it cannot be sufficient, in order to prevent a finding of systematic and persistent failure to comply with the provisions of Article 13 of, in conjunction with Annex XI to, Directive 2008/50, that the limit values referred to therein were not exceeded for certain years during the period covered by the action. Indeed, as is apparent from the very definition of 'limit value' in Article 2(5) of Directive 2008/50, that value must, in order to avoid, prevent or reduce harmful effects on human health and/or the environment as a whole, be attained within a given time limit and not be exceeded once attained. As regards the present action, the Italian Republic should have complied with the limit values laid down in those provisions from 1 January 2008.

76 It follows that the exceedances thus established must be regarded as persistent and systematic, without the Commission's being required to provide additional evidence to that effect.

77 Likewise, contrary to what the Italian Republic claims, a failure to fulfil obligations may remain systematic and persistent even where a partial downward trend may be revealed by the data collected, which does not, however, result in that Member State complying with the limit values that it is required to observe (judgments of 22 February 2018, *Commission v Poland*, C-336/16, EU:C:2018:94, paragraph 65, and of 30 April 2020, *Commission v Romania (Exceedance of limit values for PM10)*, C-638/18, not published, EU:C:2020:334, paragraph 70), as is the situation in the present case.

78 It is also necessary to reject the Italian Republic's argument that Directive 2008/50 provides for an obligation only to reduce PM10 concentration levels gradually and, therefore, that the exceedance of the limit values established for PM10 by that directive has the sole effect of requiring Member States to adopt an air quality plan.

79 That argument has no basis either in the wording of that directive or in the Court's case-law referred to in paragraph 71 of the present judgment, which confirms that Member States are required to achieve the result referred to in Article 13(1) of Directive 2008/50 and Annex XI thereto, that is, that the limit values laid down by those provisions are not exceeded.

80 Such an interpretation would, moreover, leave the achievement of the objective of protection of human health, referred to in Article 1(1) of Directive 2008/50, to the sole discretion of the Member States, which is contrary to the intentions of the EU legislature, as is apparent from the very definition of the concept of 'limit value', set out in paragraph 75 of the present judgment, requiring that compliance be guaranteed within a given period and subsequently maintained.

81 In addition, to accept such an argument would amount to allowing a Member State to disregard the deadline imposed by the provisions of Article 13 of, in conjunction with Annex XI to, Directive 2008/50, and thus comply with the limit values for PM10 under less stringent conditions than those imposed by Article 22 of that directive, which alone expressly provides for the possibility for a Member State to be

exempted from that deadline, and would therefore impair the effectiveness of those provisions (see, by analogy, judgment of 19 November 2014, *ClientEarth*, C-404/13, EU:C:2014:2382, paragraphs 42 to 44).

82 Nor can the Court accept the argument, put forward by the Italian Republic, that the exceedance of the limit values for PM10 cannot be attributed solely to the Member State concerned, since, first, the variety of sources of air pollution, some of which are natural and others determined by EU policies, particularly in the fields of transport, energy and agriculture, reduces the possibilities for a single Member State to take action concerning those sources and to comply with the limit values for PM10 and, secondly, the zones and agglomerations concerned have topographical and climatic features that are particularly unfavourable to the dispersion of pollutants. In the view of that Member State, failure to fulfil obligations cannot be established without the Commission's adducing proof that the alleged infringement is exclusively attributable to the Member State concerned.

83 It should be recalled in this respect that, in proceedings for failure to fulfil obligations under Article 258 TFEU, it is for the Commission to establish the existence of the alleged failure to fulfil obligations and thus to prove that a Member State has failed to fulfil an obligation under a provision of EU law, without being able to rely on any presumption (see, inter alia, judgment of 5 September 2019, *Commission v Italy (Bacteria Xylella fastidiosa)*, C-443/18, EU:C:2019:676, paragraph 78 and the case-law cited).

84 However, as regards the alleged infringement in the present case, it must be emphasised, as is apparent from recitals 17 and 18 of Directive 2008/50, that the EU legislature set the limit values laid down by that directive in order to protect human health and the environment, while taking full account of the fact that air pollutants are produced by multiple sources and activities and that various policies, both at national and EU level, may have an impact in that regard.

85 Furthermore, that directive provides, first, in Articles 20 and 21, for the possibility for a Member State to obtain recognition of natural sources and winter-sanding or -salting of roads as sources of pollution contributing to the exceedances of the limit values complained of. Secondly, Article 22(2) of that directive lays down the conditions under which, because of the specific situation of a zone or agglomeration in particular on account of the dispersal characteristics of the site or of adverse climatic conditions, temporary exemption from the obligation to comply with those values may be granted after an examination which, as is apparent from paragraph 4 of that article, also entails taking into account the estimated effects of existing and future national and EU measures.

86 It follows that, in so far as the Commission adduces evidence showing exceedance of the daily and annual limit values laid down by Article 13 of Directive 2008/50, read in conjunction with Annex XI thereto, in the zones and agglomerations concerned by its action and in respect of the periods referred to therein, a Member State cannot, without having been granted derogations under the provisions cited in the above paragraph and in accordance with the conditions provided for in those provisions, rely on such circumstances in order to challenge the attributability of the alleged infringement, and thus exempt itself from compliance with the clear obligations that it has been required to satisfy as from 1 January 2005, in accordance, initially, with Article 5 of Directive 1999/30 and Annex III thereto, and subsequently with Article 13 of, and Annex XI to, Directive 2008/50.

87 Where such a finding has, as in the present case, been made, and in the absence of proof adduced by the Italian Republic of the existence of exceptional circumstances whose consequences could not have been avoided despite all the steps taken, 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 or structural difficulties encountered by it (see, to that effect, judgments of 19 December 2012, *Commission v Italy*, C-68/11, EU:C:2012:815, paragraphs 63 and 64, and of 24 October 2019, *Commission v France (Exceedance of limit values for nitrogen dioxide)*, C-636/18, EU:C:2019:900, paragraph 42).

88 As regards, in particular, the Italian Republic's argument that European transport policies contributed to the exceedance of the limit values for PM10 in Italy, in particular since they did not take account of the nitrogen dioxide emissions actually produced by vehicles, especially diesel vehicles, it must be noted that



the present action for failure to fulfil obligations relates to concentration levels of PM10 and not of nitrogen dioxide. Furthermore, as the Court has previously held, in addition to the fact that motor vehicles subject to the standards laid down in Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information (OJ 2007 L 171, p. 1) are not the only cause of emissions of nitrogen dioxide, or of PM10 particulate matter, EU rules applicable to type approval of motor vehicles cannot exempt Member States from their obligation to comply with the limit values established by Directive 2008/50 on the basis of the scientific knowledge and experience of the Member States so as to reflect the level deemed appropriate by the European Union and the Member States in order to avoid, prevent or reduce the harmful effects of air pollutants on human health and the environment as a whole (see, to that effect, judgment of 24 October 2019, *Commission v France (Exceedance of limit values for nitrogen dioxide)*, C-636/18, EU:C:2019:900, paragraph 48).

- 89 Moreover, the topographical and climatic features of the zones and agglomerations concerned which are particularly unfavourable to the dispersion of pollutants are not such as to exempt the Member State concerned from responsibility for exceeding the limit values for PM10 but, on the contrary, constitute factors, as is apparent from point 2(c) and (d) of Section A of Annex XV to Directive 2008/50, which must be taken into account in the air quality plans that that Member State must, pursuant to Article 23 of that directive, draw up for those zones or agglomerations in order to achieve the limit value in the event of its exceedance.
- 90 Moreover, nor can the argument that the Commission was late in taking the measures necessary to achieve the objectives of Directive 2008/50 exempt the Italian Republic from its failure to fulfil its obligations under Article 13(1) of that directive, read in conjunction with Annex XI thereto (judgment of 24 October 2019, *Commission v France (Exceedance of limit values for nitrogen dioxide)*, C-636/18, EU:C:2019:900, paragraph 47).
- 91 As regards the argument based on the scope of the reference to the ‘margin of tolerance’ in Articles 13, 22 and 23 of Directive 2008/50 and Annex XI thereto, to the effect that compliance with the concentration limit values must always include that margin of tolerance, so that there is an infringement of that directive only if it is established that the exceedance breaches that margin, it must be held that, in accordance with the wording of Article 2(7) of that directive, a ‘margin of tolerance’ constitutes the percentage of the limit value by which that value may be exceeded ‘subject to the conditions laid down in [Directive 2008/50]’. However, the application of such a margin applies only in the two scenarios referred to in Article 22(1) and (2) of that directive, as expressly stated in Article 22(3).
- 92 Article 22(1) and (2) of Directive 2008/50 allows, respectively, a five-year postponement of the deadline for compliance with the limit values for nitrogen dioxide or benzene, or a suspension until 11 June 2011 of the obligation to apply the limit values for PM10, as set out in Annex XI to that directive, on account of the particular situation in the zone concerned. In either scenario, Article 22(4) requires Member States to send a notification to that effect to the Commission, accompanied in any event by an air quality plan, and provides that ‘the relevant conditions for the application of paragraphs 1 or 2 shall be deemed to be satisfied’ only where the Commission has raised no objections within nine months of receipt of that notification.
- 93 Consequently, it is only in the absence of any objection on the part of the Commission, referred to in the second subparagraph of Article 22(4) of that directive, within nine months of the notification provided for in that provision, that a margin of tolerance may be granted to a Member State. Moreover, as regards PM10 concentrations, such a margin of tolerance constituted, in any event, a transitional measure which could be applied only until 11 June 2011, as is clear from the wording of Article 22(2) of that directive. That provision therefore no longer has any legal effect.
- 94 Moreover, it must be held that the Italian Republic was not granted any margin of tolerance under Article 22(3) and (4) of Directive 2008/50, with the result that that argument, put forward by the Italian

Republic, cannot succeed either.

95 As regards the Italian Republic's argument that, first, the fact that the complaints raised by the Commission relate to only 17% of the whole of the national territory, which consequently precludes per se infringement of Article 13 of that directive, which, it argues, can only be envisaged if the limit values for PM10 are exceeded throughout the national territory, and, secondly, the differences in values recorded in measuring stations located in a single zone are, contrary to what the Commission maintains, relevant, it should be noted that the fact that limit values for PM10 are exceeded, even in a single zone, is sufficient in itself for a possible finding of failure to comply with the provisions of Article 13(1) of, and Annex XI to, Directive 2008/50 (judgment of 30 April 2020, *Commission v Romania (Exceedance of limit values for PM10)*, C-638/18, not published, EU:C:2020:334, paragraph 72 and the case-law cited).

96 Infringement of those provisions is examined in that context at the level of zones and agglomerations, and exceedance must be analysed for each zone or agglomeration on the basis of results from each measuring station. The Court has held, in that regard, that Article 13(1) and Article 23(1) of Directive 2008/50 must be interpreted, in accordance with the general scheme and purpose of the rules of which those provisions form part, as meaning that, in order to establish whether a limit value with an averaging period of one calendar year, as laid down in Annex XI to that directive, has been exceeded, it is sufficient that a pollution level higher than that value be measured at a single sampling point (judgments of 26 June 2019, *Craeynest and Others*, C-723/17, EU:C:2019:533, paragraphs 60, 66 and 68, and of 30 April 2020, *Commission v Romania (Exceedance of limit values for PM10)*, C-638/18, not published, EU:C:2020:334, paragraph 73).

97 Thus, it is clear from that case-law that there is no *de minimis* threshold with regard to the number of zones in which an exceedance may be detected or with regard to the number of measuring stations in a given zone for which exceedances are recorded (judgment of 30 April 2020, *Commission v Romania (Exceedance of limit values for PM10)*, C-638/18, not published, EU:C:2020:334, paragraph 74). Moreover, it is apparent from the file that, the zones concerned by the present action include the largest agglomerations in Italy, which have several tens of millions of inhabitants. Ignoring this fact would be tantamount to disregarding the objectives pursued by Directive 2008/50, in particular the protection of human health and of the environment as a whole.

98 It follows from the foregoing that the first complaint must be upheld.

***The second complaint, alleging infringement of Article 23(1) of Directive 2008/50, read alone and in conjunction with Section A of Annex XV to that directive***

*Arguments of the parties*

99 By its second complaint, the Commission submits that, since 11 June 2010, the Italian Republic has failed to fulfil its obligations under Article 23(1) of Directive 2008/50, read alone and in conjunction with Section A of Annex XV to that directive, in particular the obligation, laid down in the second subparagraph of Article 23(1) of that directive, to ensure that the period of exceedance of the limit values for PM10 can be kept as short as possible.

100 The Commission submits, as a preliminary point, that two obligations derive principally from Article 23(1) of Directive 2008/50, that is, first, the obligation to adopt appropriate measures to ensure that the exceedance period can be kept as short as possible and, second, the obligation to include in the air quality plans the minimum content laid down in Section A of Annex XV to that directive.

101 The Commission submits that Article 23(1) of Directive 2008/50 establishes a direct link between, on the one hand, exceedance of the limit values for PM10 laid down by that directive, that is to say, the infringement of the obligations under Article 13(1) of, in conjunction with Annex XI to, that directive, and, on the other hand, the establishment of air quality plans.

- 102 In that context, the Commission submits that a case-by-case analysis of the air quality plans drawn up by the Member State concerned should be carried out to check whether they comply with Article 23 of Directive 2008/50. In the context of that assessment, 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 kept as short as possible.
- 103 In order to determine whether an air quality plan provides for appropriate measures to ensure that the period during which the limit values are exceeded is as short as possible, the Commission submits that account should be taken of a number of factors, inferred, in particular, from the relevant case-law of the Court.
- 104 First, the classification by the Court of the exceedance of limit values for several years as ‘systematic and persistent’ shows in itself, without there being any need to examine in detail the content of the air quality plans drawn up by the Member State concerned, that that Member State has failed to implement appropriate and effective measures to keep the period during which the limit values for PM10 are exceeded ‘as short as possible’ (judgment of 5 April 2017, *Commission v Bulgaria*, C-488/15, EU:C:2017:267, paragraphs 115 to 117).
- 105 Secondly, exceeding the limit values over a long period amounts to strong evidence that the Member State has not fulfilled its obligation under the second subparagraph of Article 23(1) of Directive 2008/50. The duration of future estimated exceedance of the limit values, should also, as the Court noted in its judgment of 22 February 2018, *Commission v Poland* (C-336/16, EU:C:2018:94, paragraph 99), be taken into consideration when assessing air quality plans, and a particularly long time frame can only be justified by exceptional circumstances.
- 106 Thirdly, account should be taken of the absolute level of exceedance of the limit values. The longer the period of exceedance of significant magnitude, the stronger the indication that the measures already taken to improve air quality are ineffective.
- 107 Fourthly, an upward trend or the absence of substantial variations in concentration levels, which are already above the limit values authorised by Directive 2008/50, constitutes an additional factor indicating that the measures taken are inappropriate.
- 108 Fifthly, the formal content of the air quality plans should be taken into account, in particular whether they contain all the information required in Section A of Annex XV to Directive 2008/50. The absence of any of that information constitutes a clear indication that those plans do not comply with Article 23 of that directive.
- 109 Sixthly, the material content of the air quality plans, in particular the balance between the diagnosis set out in those plans and the measures envisaged, the analysis of all possible measures and whether they are binding or merely an incentive, and the sources of funding for their implementation are factors which should be taken into account in the assessment of those plans.
- 110 In that context, the Commission argues that, although Member States have a certain margin of discretion in the choice of measures to be implemented, such a margin is severely limited in so far as they must consider and implement all possible measures, namely those which allow for effective and timely remedial action to be taken where limit values are exceeded.
- 111 After verification of the air quality plans for all the zones covered by its action, in the light of the factors referred to in paragraphs 104 to 109 of the present judgment, the Commission maintains that those plans were adopted in breach of Article 23 of Directive 2008/50, in so far as they did not make it possible either to ensure compliance with the limit values for PM10 or to ensure that the period in which those limit values are exceeded was kept ‘as short as possible’. Moreover, that adoption took place in breach of the provisions of Article 23 of, in conjunction with Section A of Annex XV to, that directive, in so far as

certain air quality plans adopted by certain Italian regions do not contain the information required by those provisions.

- 112 The Italian Republic submits that the Commission highlights, as regards the second complaint, general points which do not take account of the particular situation of each Italian zone or agglomeration in question, confining itself rather to findings that are inductive, generic, formal and systematically lacking in analysis of the causes of the exceedance of the limit values for PM10 and of the technical suitability of the measures provided for in the air quality plans in order to bring it to an end. In reality, the Commission merely complains that those plans, although undeniably valid, do not provide for the end of that exceedance within a period which is kept 'as short as possible' according to the subjective assessment made by the Commission itself.
- 113 The Italian Republic maintains, in that regard, first, that the Commission relies on extrinsic and generic evidence relating to the duration and extent of the divergences between the concentration levels recorded and the maximum values laid down by EU law. Those elements are valid for any air quality plan and, as such, are incompatible with a rigorous case-by case analysis of the causes of divergence and the measures adopted.
- 114 Secondly, in the view of the Italian Republic, the Commission has failed to assess the measures adopted by the national authorities in the light of the applicable European principles concerning clean air, in particular the principle of balance between public and private interests and the principle of proportionality.
- 115 With regard to the latter principle, the Italian Republic submits that a Member State may not adopt measures that are socially and economically unsustainable or liable to undermine the fundamental values of EU law, such as, for example, free movement of goods and persons, freedom to conduct business or the right to public utility services, such as access to domestic heating, even if those are the only measures with the potential to make it possible to achieve the limit values within the prescribed periods. .
- 116 The Italian Republic maintains that the national authorities have a wide margin of discretion in the choice of measures to be adopted in order to achieve the objectives laid down by EU law, that national choice being open to challenge only if it is vitiated by an error of assessment of the facts or is manifestly irrational in so far as it is clearly inappropriate for the purpose of achieving those objectives or if it is possible to substitute those measures for others which do not affect the fundamental freedoms enshrined by the EU legislature.
- 117 Relying on the principle of subsidiarity, the Italian Republic submits that it is for the national authorities, in so far as it falls within their competence, to research and adopt measures with the potential to limit pollutant concentrations. The Commission cannot therefore take the place of those authorities, and nor may it simply state in general terms that the national measures are insufficient without demonstrating that they are manifestly technically inadequate.
- 118 The Italian Republic submits that, in that context, the Commission has not attached any importance to the process seeking to achieve the limit values, which is currently under way in Italy and which is implementing sustainable and proportionate measures, and concludes that, if, on account of the principle of balance between all public and private interests, it is possible to comply with the air quality limit values in certain zones only in the coming years, that fact cannot constitute an infringement of either Article 23 or Article 13 of Directive 2008/50.
- 119 In that context, the Italian Republic submits that the assessment of the ongoing reduction of PM10 concentrations in ambient air can be analysed only in the light of multiannual readings, which make it possible to identify a clear trend concerning the reduction of PM10 concentrations between 2008 and 2016, where an anomaly in the trend recorded in a single year, such as in 2015, which is abnormal owing to exceptional climatic circumstances, does not permit the conclusion to be drawn that there has been a reversal of the trend towards improvement.

- 120 The Italian Republic submits in that regard that, in reality, Article 23 of Directive 2008/50 does not lay down any predefined timetable for achieving the limit values in zones where the limit values have been exceeded. Instead, that article should be applied, according to a systematic interpretation of EU law, in the light of the principle of proportionality and the ‘sustainability’ of the process leading to compliance with the limit values. If the requirement that the period be kept ‘as short as possible’ were associated with predefined deadlines, as the Commission considers, and the only adequate measures to achieve the limit values within those deadlines were socially and economically unsustainable or likely to undermine certain fundamental values of EU law, the State would be in breach of its general duty to ensure a balance between those values. Therefore, the fact that the air quality plans provide for the limit values to be attained over a relatively long period is not, from that point of view, inconsistent with the need for the period of time during which those limit values are exceeded to be kept ‘as short as possible’.
- 121 As regards, in particular, the regional air quality plans for the zones and agglomerations concerned, the Italian Republic argues that, in addition to setting out the significant results achieved in the process of improving air quality in all the zones concerned between 2008 and 2016, including compliance with the limits in certain zones, they also show on a case-by-case basis the effectiveness of the series of measures provided for in the regional improvement plans, the formal completeness of those plans and the unfounded nature of the presumptions used by the Commission to assert that the measures referred to therein are not suitable for keeping the exceedance period as short as possible.
- 122 In its reply, the Commission contests the Italian Republic’s argument that Directive 2008/50 does not specify any ‘predefined timetable’ for the adoption of air quality plans and that such plans are not subject to ‘predefined time limits’, with the result that the competent authorities remain free to choose the time that they consider appropriate for the adoption of those plans.
- 123 The Commission submits that the Italian Republic’s argument amounts to authorising, under Article 23 of Directive 2008/50, indefinite postponement of compliance with the limit values referred to in Article 13 of that directive, in so far as it is sufficient for the Member State concerned to adopt the measures which, at its sole discretion, it considers appropriate. Such an interpretation would render both Article 13 and Article 23 of that directive ineffective.
- 124 In that context, the Commission recalls that the need to ensure clean air serves the fundamental interest of protecting human health and that the discretion of the competent authorities should be consistent with that imperative.
- 125 The Commission also objects to the Italian Republic’s argument that it is essential to have long time limits – ranging from 5 to 10 years – for the measures provided for in the various air quality plans to take effect. It argues that, in any event, it is for the Member State concerned to contest the evidence of persistent exceedance of the limit values and to demonstrate, in particular, that its air quality plans meet the requirements of Article 23(1) of, and Section A of Annex XV to, that directive.
- 126 Finally, the Commission denies the Italian Republic’s claim that it did not analyse the air quality plans in question on a case-by-case basis and confined itself to raising mere presumptions of failure to fulfil obligations.
- 127 Even after a detailed examination of each of the regional air quality plans, the Commission submits that the obligation laid down by Article 23 of Directive 2008/50 has not been fulfilled, arguing, *inter alia*, that most of the measures taken by the Italian Republic will not produce effects until several years later so that it will not be possible to achieve the limit values before 2020 or 2025, or even 2030.
- 128 The Italian Republic, in its rejoinder, submits that the Commission cannot merely contest in a very general manner the excessive length of the deadlines provided for in the context of regional planning. Rather, it should state the reasons why, in the specific economic and social context, the measures identified by the local authorities in the air quality plans are manifestly unreasonable. The criteria selected by the Commission for the analysis of compliance with Article 23(1) of Directive 2008/50 are thus manifestly

inappropriate and give too much weight to the length of the deadlines for achieving the air quality objectives. Furthermore, the Italian Republic maintains that its argument relating to the absence of a 'predefined timetable' in Directive 2008/50 does not relate to the adoption of the air quality plans, but to the achievement of the objectives provided for by such plans.

129 The Italian Republic also maintains that it cannot be accused of any delay in adopting the air quality plans and reiterates the effectiveness of the sustainable and proportionate measures provided for in each of those regional plans, as evidenced by proven downward trends in PM10 concentrations in the zones concerned by the present action.

### *Findings of the Court*

130 It follows from the second subparagraph of Article 23(1) of Directive 2008/50 that in the event of exceedances of the limit values for PM10 for which the attainment deadline has already expired, the Member State concerned is required to draw up an air quality plan meeting certain requirements.

131 Accordingly, that plan must set out appropriate measures, so that the exceedance period is kept as short as possible, and may additionally include specific measures designed to protect sensitive population groups, including children. Furthermore, under 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 to the directive and may also include measures pursuant to Article 24 of the directive. That plan must be communicated to the Commission without delay, and no later than two years after the end of the year in which the first breach of the limit values was detected.

132 According to the Court's settled case-law, Article 23(1) of Directive 2008/50 is of general application given that it applies, without being limited in time, to exceedances of any pollutant limit value established by that directive, after the deadline fixed for its application, whether that deadline is fixed by that directive or by the Commission under Article 22 of the directive (judgments of 5 April 2017, *Commission v Bulgaria*, C-488/15, EU:C:2017:267, paragraph 104, and of 30 April 2020, *Commission v Romania (Exceedance of limit values for PM10)*, C-638/18, not published, EU:C:2020:334, paragraph 114 and the case-law cited).

133 It must also be noted that Article 23 of Directive 2008/50 establishes a direct link between, first, the exceedance of the limit values for PM10, as 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 air quality plans (judgments of 5 April 2017, *Commission v Bulgaria*, C-488/15, EU:C:2017:267, paragraph 83, and of 30 April 2020, *Commission v Romania (Exceedance of limit values for PM10)*, C-638/18, not published, EU:C:2020:334, paragraph 115 and the case-law cited).

134 Such 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 (judgments of 5 April 2017, *Commission v Bulgaria*, C-488/15, EU:C:2017:267, paragraph 106, and of 30 April 2020, *Commission v Romania (Exceedance of limit values for PM10)*, C-638/18, not published, EU:C:2020:334, paragraph 116 and the case-law cited).

135 Therefore, the fact that a Member State has exceeded the limit values for PM10 is not in itself sufficient to find that that Member State has failed to fulfil its obligations under the second subparagraph of Article 23(1) of Directive 2008/50 (judgments of 5 April 2017, *Commission v Bulgaria*, C-488/15, EU:C:2017:267, paragraph 107, and of 30 April 2020, *Commission v Romania (Exceedance of limit values for PM10)*, C-638/18, not published, EU:C:2020:334, paragraph 117 and the case-law cited).

136 However, it follows from the second subparagraph of 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 kept as short as possible (judgments of 5 April 2017, *Commission v Bulgaria*, C-488/15, EU:C:2017:267, paragraph 109, and of

30 April 2020, *Commission v Romania (Exceedance of limit values for PM10)*, C-638/18, not published, EU:C:2020:334, paragraph 118 and the case-law cited).

137 In those circumstances, it is necessary to ascertain on the basis of a case-by-case analysis whether the air quality plans drawn up by the Member State concerned comply with the second subparagraph of Article 23(1) of Directive 2008/50 (judgments of 5 April 2017, *Commission v Bulgaria*, C-488/15, EU:C:2017:267, paragraph 108, and of 30 April 2020, *Commission v Romania (Exceedance of limit values for PM10)*, C-638/18, not published, EU:C:2020:334, paragraph 119 and the case-law cited).

138 In the present case, it must be held, at the outset, that the Italian Republic has systematically and persistently failed to fulfil its obligations under the provisions of Article 13(1) of, in conjunction with Annex XI to, Directive 2008/50 in the zones and agglomerations concerned by the present action, between 2008 and 2017, as is apparent from the examination of the first complaint raised by the Commission.

139 It should be noted in this context that the obligation to draw up air quality plans containing appropriate measures to ensure that the exceedance period is kept as short as possible in the event of exceedances of the limit values laid down in Directive 2008/50 has been binding on the Member State concerned since 11 June 2010. In so far as such exceedances had already been detected on or even before that date in almost all the zones and agglomerations covered by this action and, in any event, in at least one zone or agglomeration covered by each regional air quality plan submitted in the context of the present action for failure to fulfil obligations as from that date, the Italian Republic, which was required to bring into force the laws, regulations and administrative provisions necessary to comply with Directive 2008/50, in accordance with Article 33(1) thereof, was required to adopt and implement appropriate measures as soon as possible, pursuant to Article 23(1) of that directive.

140 However, it is apparent from the information in the file, first, that the air quality plan for the region of Sicily was adopted on 18 July 2018, that is to say, after the expiry of the deadline prescribed in the reasoned opinion on 28 June 2017, as confirmed by the Italian Republic in its statement of defence, even though exceedances of the daily limit value for PM10 were detected in a zone covered by that region from 2008. As regards the other regions to which the zones and agglomerations referred to in the present action belong, it may be concluded from the information referred to above that, at the time of expiry of that deadline, the Italian Republic had indeed adopted air quality plans and various measures to improve air quality.

141 Secondly, it must be highlighted that, under the third subparagraph of Article 23(1) of Directive 2008/50, air quality plans must incorporate at least the information listed in Section A of Annex XV to that directive. However, it is apparent from the information in the file that the regional plans for the regions of Umbria, Lazio, Campania and Apulia do not contain any information concerning the deadline prescribed for attaining the air quality objectives. Moreover, as regards many of the measures referred to by the Italian Republic, those data do not always make it possible to establish whether those measures relate to the zones and agglomerations concerned by the present action, what their timetable is or what their impact is on the expected improvement in air quality.

142 Thirdly, the regional plans laying down deadlines for meeting air quality objectives set out a time frame for implementation that may last for several years or even sometimes two decades after the entry into force of the limit values for PM10. Indeed, for the regions of Emilia-Romagna and Tuscany, the deadline for achieving the air quality objectives was estimated as 2020, for the regions of Veneto and Lombardy as 2025 and for the region of Piedmont as 2030.

143 Fourthly, it is apparent from an examination of the content of the regional air quality plans submitted in the context of the present proceedings for failure to fulfil obligations which admittedly attest to a process currently under way in the Italian Republic which is aimed at attaining the limit values, that the measures provided for therein, in particular those designed to bring about structural changes specifically with regard to the main pollution factors in the zones and agglomerations in which those limit values have been exceeded from 2008 onwards, have, for the most part, been provided for only in recent updates of those

plans and therefore just before, or even after, the deadline for replying to the reasoned opinion, or are still in the process of being adopted or planned. Thus, not only were those measures adopted at least six years after the obligation to provide for appropriate measures to put an end to such exceedances within the shortest possible period of time entered into force, but, moreover, they often provide for particularly long implementation periods.

- 144 Fifthly, in so far as the Italian Republic relies, to demonstrate the appropriateness of the measures provided for in the regional plans, on a clear trend towards an improvement in air quality recorded throughout Italian territory, in particular in recent years, and maintains that, for the purposes of identifying such a trend, the data for 2017 could be taken into account, it should be pointed out, as a preliminary point, that much of the evidence submitted by that Member State in support of its arguments does not relate to the zones and agglomerations covered by the present action.
- 145 While a certain long-term reduction in the level of exceedances of limit values can be observed in some of those zones and agglomerations, it should, first, be pointed out, as noted in paragraph 74 of the present judgment, that, of the 27 zones and agglomerations covered by the present action, compliance with the daily limit value for PM10 not to be exceeded more than 35 times in any one year was achieved in 2017 in only two zones. Next, those data show, in a large majority of the zones and agglomerations concerned, an increase in the number of exceedances of that limit value for 2017 compared with 2016, during which no compliance with that number could in any event be observed. Furthermore, the number of exceedances of the daily limit value for PM10 alone in several zones and agglomerations concerned is almost as high for 2017 as for 2010, and in some zones it can reach twice or even three times the permitted number of exceedances. Moreover, with regard to the annual limit value for PM10, the same data show that almost all the zones concerned in the regions of Piedmont and Lombardy have experienced an increase in PM10 concentrations and that only the zones concerned in the regions of Lazio and Veneto and one zone in the region of Lombardy no longer exceeded that value in 2017.
- 146 In the light of the factors set out in paragraphs 138 to 145 of the present judgment, it must be pointed out that the Italian Republic has manifestly failed to adopt in good time appropriate measures to ensure that the period of exceedance of the limit values for PM10 is kept as short as possible in the zones and agglomerations concerned. Thus, exceedance of the daily and annual limit values for PM10 has remained systematic and persistent for at least eight years in those zones, notwithstanding the obligation for that Member State to take all appropriate and effective measures to comply with the requirement that the exceedance period should be kept as short as possible.
- 147 However, that situation in itself demonstrates, without there being any need to examine in greater detail the content of the air quality plans drawn up by the Italian Republic, that, in the present case, that Member State has not implemented appropriate and effective measures to ensure that the period of time during which the limit values for PM10 are exceeded is kept 'as short as possible' within the meaning of the second subparagraph of Article 23(1) of Directive 2008/50 (see, to that effect, judgments of 5 April 2017, *Commission v Bulgaria*, C-488/15, EU:C:2017:267, paragraph 117, and of 30 April 2020, *Commission v Romania (Exceedance of limit values for PM10)*, C-638/18, not published, EU:C:2020:334, paragraph 123, and the case-law cited).
- 148 As regards the Italian Republic's argument that it is essential for the Member State concerned to have long deadlines so that the measures provided for in the various air quality plans can produce their effects, since Directive 2008/50 does not provide for a predefined timetable in that regard, it must be held that that consideration cannot, in any event, justify a particularly long deadline for putting an end to an exceedance of the limit values, such as those envisaged in the present case, which must be assessed, in any event, in the light of the temporal references provided for in Directive 2008/50 within which to comply with its obligations, or, as in the present case, taking account of the judgment of 19 December 2012, *Commission v Italy* (C-68/11, EU:C:2012:815), and thus 1 January 2008 for the limit values for PM10 and 11 June 2010 for the adoption of air quality plans, and in the light of the importance of the objectives of protection of human health and the environment pursued by that directive.



- 149 It should be noted in that regard that, according to the very wording of the second subparagraph of Article 23(1) of Directive 2008/50, the appropriateness of the measures referred to in an air quality plan must be assessed in relation to their capacity to ensure that the exceedance period is ‘kept as short as possible’, that requirement being stricter than that previously applicable under Directive 96/62, which merely required the Member States to adopt measures to bring air quality into line with the limit values for PM10 ‘within a reasonable period’ (see, to that effect, judgment of 5 April 2017, *Commission v Bulgaria*, C-488/15, EU:C:2017:267, paragraphs 88 to 90).
- 150 It is with that in mind that Article 23 of Directive 2008/50 requires that, where it has been established that the limit values for PM10 have been exceeded, such a situation should lead the Member State concerned as soon as possible not only to adopt but also to implement appropriate measures in an air quality plan, the discretion available to that Member State in the event of an exceedance of the limit values being accordingly, in that context, limited by that requirement.
- 151 Moreover, as regards the Italian Republic’s argument that the deadlines which it has laid down are wholly appropriate to the extent of the structural changes necessary to put an end to the exceedances of the limit values for PM10 in ambient air, highlighting in particular difficulties pertaining to the socio-economic and budgetary implications of the investments to be made and local traditions, it should be recalled that that Member State must establish that the difficulties on which it relies in bringing to an end the exceedances of limit values for PM10 are such as to rule out the possibility that shorter deadlines could have been set (see, to that effect, judgment of 22 February 2018, *Commission v Poland*, C-336/16, EU:C:2018:94, paragraph 101).
- 152 However, the Court has previously held, in reply to arguments that are entirely comparable to those put forward by the Italian Republic in the present case, that structural difficulties arising from the socio-economic and budgetary implications of large-scale investments that need to be carried out, were not, in themselves, exceptional and were not such as to rule out the possibility that shorter deadlines could have been set (see, to that effect, judgments of 24 October 2019, *Commission v France (Exceeding limit values for nitrogen dioxide)*, C-636/18, EU:C:2019:900, paragraph 85, and, by analogy, of 22 February 2018, *Commission v Poland*, C-336/16, EU:C:2018:94, paragraph 101). The same applies to local traditions.
- 153 In that context, in the light of the foregoing, the Italian Republic’s argument based on the principles of proportionality, subsidiarity and balance between public and private interests, which, in its view, allows for even very long postponements of compliance with the limit values laid down by Directive 2008/50 must also be rejected. The Court has previously stated that, in accordance with Article 23(1) of that directive, air quality plans must be adopted on the basis of the balance between the aim of minimising the risk of pollution and the various opposing public and private interests (see to that effect judgments of 5 April 2017, *Commission v Bulgaria*, C-488/15, EU:C:2017:267, paragraph 106, and of 24 October 2019, *Commission v France (Exceeding limit values for nitrogen dioxide)*, C-636/18, EU:C:2019:900, paragraph 79).
- 154 Although Article 23(1) cannot thus require, where the limit values laid down by Directive 2008/50 are exceeded, that the measures adopted by a Member State for the purpose of implementing that balance must ensure immediate compliance with those limit values in order for them to be regarded as appropriate, it does not follow that, interpreted in the light of that principle, Article 23(1) could constitute an additional scenario for a generalised, potentially indefinite extension of the deadline for complying with those values which are intended to protect human health, since Article 22 of that directive is, as noted in paragraph 81 of the present judgment, the only provision that provides for the possibility of an extension of that deadline.
- 155 In the light of all the foregoing, it must be held that the arguments put forward by the Italian Republic cannot, as such, justify long deadlines for bringing to an end the exceedances of the limit values established in the light of the requirement to ensure that the period of exceedance is kept as short as possible.

156 Finally, as regards the Italian Republic's claim that the complaints raised by the Commission are too general and that there is a lack of a case-by-case analysis of the various air quality plans, meaning that that institution has put forward mere presumptions of failure to fulfil obligations, it is sufficient to note that it is apparent from the file submitted to the Court that the Commission concluded that the air quality plans at issue did not comply with Directive 2008/50 after taking into account the various factors referred to in paragraphs 138 to 145 of the present judgment.

157 It follows that the second complaint put forward by the Commission must be upheld.

158 In the light of all the foregoing considerations, it must be held that,

- by having systematically and persistently exceeded the limit values for PM10, and continuing to exceed them,
  - as regards the daily limit value, from 2008 and up to 2017 inclusive in the following zones: IT 1212 (Sacco Valley); IT 1507 (former zone IT 1501, 'improvement zone' – Naples and Caserta); IT 0892 (Emilia- Romagna, Pianura Ovest (Western Plain)); IT 0893 (Emilia-Romagna, Pianura Est (Eastern Plain)); IT 0306 (agglomeration of Milan); IT 0307 (agglomeration of Bergamo); IT 0308 (agglomeration of Brescia); IT 0309 (Lombardy, plain with a high level of urbanisation A); IT 0310 (Lombardy, plain with a high level of urbanisation B); IT 0312 (Lombardy, valley floor D); IT 0119 (Piedmont, plain); zone IT 0120 (Piedmont, high ground);
  - from 2008 and up to 2016 inclusive, in zone IT 1215 (agglomeration of Rome);
  - from 2009 and up to 2017 inclusive in the following zones: IT 0508 and IT 0509 (former zone IT 0501, agglomeration of Venice-Treviso); IT 0510 (former zone IT 0502, agglomeration of Padua); IT 0511 (former zone IT 0503, agglomeration of Vicenza), IT 0512 (former zone IT 0504, agglomeration of Verona); IT 0513 and IT 0514 (former zone IT 0505; zone A 1 – Veneto Province);
  - from 2008 to 2013, and subsequently again from 2015 to 2017 in zone IT 0907 (zone Prato-Pistoia);
  - from 2008 to 2012, and subsequently again from 2014 to 2017 in zones IT 0909 (zone Valdarno Pisano and Piana Lucchese) and IT 0118 (agglomeration of Turin);
  - from 2008 to 2009, and from 2011 to 2017, in zones IT 1008 (zone Conca Ternana) and IT 1508 (former zone IT 1504 Benevento hilly coastal zone);
  - in 2008, and from 2011 to 2017, in zone IT 1613 (Apulia – industrial zone) and from 2008 to 2012, and in 2014 and 2016, in zone IT 1911 (agglomeration of Palermo); as well as
- with regard to the annual limit value in the following zones: IT 1212 (Sacco Valley) from 2008 to 2016 inclusive; IT 0508 and IT 0509 (former zone IT 0501, agglomeration of Venice-Treviso) in 2009, 2011 and 2015; IT 0511 (former zone IT 0503, agglomeration of Vicenza), in 2011, 2012 and 2015; IT 0306 (agglomeration of Milan), from 2008 to 2013 and in 2015, IT 0308 (agglomeration of Brescia), IT 0309 (Lombardy, plain with a high level of urbanisation A) and IT 0310 (Lombardy, plain with a high level of urbanisation B) from 2008 until 2013 and in 2015 and 2017; IT 0118 (agglomeration of Turin) from 2008 until 2012 and in 2015 and 2017,

the Italian Republic has failed to fulfil its obligations under the provisions of Article 13 of, in conjunction with Annex XI to, Directive 2008/50,

and

- by failing to adopt as from 11 June 2010 appropriate measures to ensure compliance with the limit values for PM10 in all those zones, the Italian Republic has failed to meet its obligations under Article 23(1) of Directive 2008/50, on its own and in conjunction with Section A of Annex XV to that directive, and in particular the obligation laid down in the second subparagraph of Article 23(1), to ensure that the air quality plans provide for appropriate measures to ensure that the period of exceedance of the limit values is kept as short as possible.

### Costs

159 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. As the Commission has applied for costs to be awarded against the Italian Republic and the latter has been essentially unsuccessful, the Italian Republic must be ordered to pay the costs.

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

1. **Declares that, by having systematically and persistently exceeded the limit values for concentrations of particulate matter PM10, and continuing to exceed them,**
  - **as regards the daily limit value,**
    - **from 2008 and up to 2017 inclusive in the following zones: IT 1212 (Sacco Valley); IT 1507 (former zone IT 1501, 'improvement zone' – Naples and Caserta); IT 0892 (Emilia- Romagna, Pianura Ovest (Western Plain)); IT 0893 (Emilia-Romagna, Pianura Est (Eastern Plain)); IT 0306 (agglomeration of Milan); IT 0307 (agglomeration of Bergamo); IT 0308 (agglomeration of Brescia); IT 0309 (Lombardy, plain with a high level of urbanisation A); IT 0310 (Lombardy, plain with a high level of urbanisation B); IT 0312 (Lombardy, valley floor D); IT 0119 (Piedmont, plain); IT 0120 (Piedmont, high ground);**
    - **from 2008 and up to 2016 inclusive, in zone IT 1215 (agglomeration of Rome);**
    - **from 2009 and up to 2017 inclusive in the following zones: IT 0508 and IT 0509 (former zone IT 0501, agglomeration of Venice-Treviso); IT 0510 (former zone IT 0502, agglomeration of Padua); IT 0511 (former zone IT 0503, agglomeration of Vicenza), IT 0512 (former zone IT 0504, agglomeration of Verona); IT 0513 and IT 0514 (former zone IT 0505; zone A 1 – Veneto Province);**
    - **from 2008 to 2013, and subsequently again from 2015 to 2017 in zone IT 0907 (zone Prato-Pistoia);**
    - **from 2008 to 2012, and subsequently again from 2014 to 2017 in zones IT 0909 (zone Valdarno Pisano and Piana Lucchese) and IT 0118 (agglomeration of Turin);**
    - **from 2008 to 2009, and from 2011 to 2017, in zones IT 1008 (zone Conca Ternana) and IT 1508 (former zone IT 1504 Benevento hilly coastal zone);**
    - **in 2008, and from 2011 to 2017, in zone IT 1613 (Apulia – industrial zone) and from 2008 to 2012, and in 2014 and 2016, in zone IT 1911 (agglomeration of Palermo); as well as**
  - **with regard to the annual limit value in the following zones: IT 1212 (Sacco Valley) from 2008 to 2016 inclusive; IT 0508 and IT 0509 (former zone IT 0501, agglomeration of Venice-Treviso) in 2009, 2011 and 2015; IT 0511 (former zone IT 0503, agglomeration of**

Vicenza), in 2011, 2012 and 2015; IT 0306 (agglomeration of Milan), from 2008 to 2013 and in 2015, IT 0308 (agglomeration of Brescia), IT 0309 (Lombardy, plain with a high level of urbanisation A) and IT 0310 (Lombardy, plain with a high level of urbanisation B) from 2008 until 2013 and in 2015 and 2017; IT 0118 (agglomeration of Turin) from 2008 until 2012 and in 2015 and 2017,

the Italian Republic has failed to fulfil its obligations under the provisions of Article 13 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

by failing to adopt as from 11 June 2010 appropriate measures to ensure compliance with the limit values for concentrations of particulate matter PM10 in all those zones, the Italian Republic has failed to meet its obligations under Article 23(1) of Directive 2008/50, on its own and in conjunction with Section A of Annex XV to that directive, and in particular the obligation laid down in the second subparagraph of Article 23(1), to ensure that the air quality plans provide for appropriate measures to ensure that the period of exceedance of the limit values is kept as short as possible.

2. Orders the Italian Republic to pay the costs.

[Signatures]

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\* Language of the case: Italian.