

## Case C-361/88

### Commission of the European Communities

v

### Federal Republic of Germany

(Directive — Nature of the measure transposing it  
into domestic law — Air pollution)

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### Summary of the Judgment

- Measures adopted by the Community institutions — Directives — Implementation by the Member States — Transposition of a directive without legislative action — Conditions — Existence of a general legal context guaranteeing the full application of the directive — Inadequacy of a practice conforming to the requirements of the directive (EEC Treaty, third para. of Art. 189)*
- Environment — Air pollution — Directive 80/779 — Fixing of limit values applicable to concentrations of sulphur dioxide — Adoption of a binding legal rule — Obligation of the Member States (Council Directive 80/779, Art. 2)*
- Action for failure to fulfil obligations — Subject-matter of the action — Determination by the reasoned opinion — Period allowed to a Member State — Subsequent termination of the infringement — Interest in continuing the action — Possible liability of the Member State (EEC Treaty, Art. 169)*

- The transposition of a directive into domestic law does not necessarily require that its provisions be incorporated formally and verbatim in express, specific legislation; a general legal context may, depending on the content of the directive, be adequate for the purpose provided that it does indeed guarantee the full application of the directive in a sufficiently clear and precise manner so that, where the directive is intended to create rights for individuals, the persons

concerned can ascertain the full extent of their rights and, where appropriate, rely on them before the national courts.

The fact that a practice is in conformity with the requirements of a directive in the matter of protection may not constitute a reason for not transposing that directive into the national legal system by provisions capable of creating a situation which is sufficiently precise, clear and transparent to enable individuals to ascertain their rights and obligations. In order to secure the full implementation of directives in law and not only in fact, Member States must establish a specific legal framework in the area in question.

2. The obligation on Member States to prescribe limit values not to be exceeded within specified periods and under specified conditions, laid down in Article 2 of Directive 80/799 on air quality limit values and guide values for sulphur dioxide and suspended particulates, is

imposed 'in order to protect human health in particular'. It implies, therefore, that in all cases where the exceeding of the limit values could endanger human health, individuals must be in a position to rely on mandatory rules in order to be able to assert their rights. Furthermore, the fixing of limit values in a provision whose binding nature is undeniable is also necessary in order that all those whose activities can give rise to nuisances can ascertain precisely the obligations to which they are subject.

3. The subject-matter of an action brought under Article 169 of the Treaty is determined by the Commission's reasoned opinion and, even where the default has been remedied after the time-limit prescribed by the second paragraph of that article has expired, there is still an interest in pursuing the action in order to establish the basis of liability which a Member State may incur as a result of its default towards other Member States, the Community or private parties.

## REPORT FOR THE HEARING in Case C-361/88 \*

### I — Facts and legislative background

By Council Directive 80/799/EEC of 15 July 1980 on air quality limit values and

guide values for sulphur dioxide and suspended particulates (Official Journal 1980 L 229, p. 30, hereinafter referred to as the 'directive'), the Council prescribed the harmonization of national laws on the

\* Language of the case: German.