

Action brought on 10 March 2017 — Republic of Poland v European Parliament and Council of the European Union

(Case C-128/17)

(2017/C 151/31)

Language of the case: Polish

Parties

Applicant: Republic of Poland (represented by: B. Majczyna, acting as Agent)

Defendants: European Parliament and Council of the European Union

Form of order sought

The applicant claims that the Court should:

- annul Directive (EU) 2016/2284 of the European Parliament and of the Council of 14 December 2016 on the reduction of national emissions of certain atmospheric pollutants, amending Directive 2003/35/EC and repealing Directive 2001/81/EC; ⁽¹⁾
- in the alternative, annul that directive in part, in so far as it concerns the establishment of national emission reduction commitments for 2030 onwards;
- order the European Parliament and the Council of the European Union to pay the costs of the proceedings.

Pleas in law and main arguments

The Republic of Poland puts forward the following pleas in law against the contested directive:

1. Breach of the principle of sincere cooperation (Article 4(3) TEU)

The defendant institutions worked on the adoption of the contested directive in a non-transparent manner, treating the Member States unequally and imposing exclusively on certain Member States additional reduction commitments which were not justified by cost-efficiency considerations or the assumptions adopted for the methodology of commitment allocation. The imposition on Poland (and on two other Member States) — prior to the conclusion of a final agreement with the European Parliament — of new emission reduction levels aimed at meeting a more ambitious general reduction level had the effect of virtually excluding Poland from the negotiations which determined the final shape of the national emission reduction commitments from 2030 onwards.

In addition, the defendant institutions deprived Poland of the opportunity to effectively validate the data concerning Poland, which served as the basis for establishing the national emission reduction commitments from 2030 onwards, and thereby infringed Poland's right to have its position considered.

2. Breach of the principles of openness and transparency (Article 15 TFEU) and failure to provide sufficient reasons (Article 296 TFEU).

The Republic of Poland claims that the underlying assumptions that formed the basis for setting the national emission reduction commitments for 2030 onwards were not made available or published. No information was provided on the projection assumptions concerning the technological structure for individual sectors, although those assumptions were in turn used in the emission projections for 2030. In the absence of this information, in turn, it is impossible to validate the reliability of the emission projections that were adopted for 2030. Secondly, it is unclear which formula was used to calculate the general health objective of reducing mortality in the European Union into an emission reduction commitment for the European Union as a whole and for individual Member States.

As a consequence, the reasoning of the institutions which adopted the directive was not presented in a clear and unambiguous manner with regard to the abovementioned reduction commitments.

3. Infringement of the obligation to carry out a proper analysis of the effect of the contested directive on individual Member States and to sufficiently assess the impact of its implementation.

The Republic of Poland claims that, given the expected broad effects of the emission reduction commitments for 2030 and beyond on the economy and society of the Member States, the impact assessment prepared by the Commission is insufficient.

The impact assessment indicates a link between the achievement of the objectives of the directive and the structural changes aimed at reducing the share of carbon as a fuel in the energy and municipal and residential sector. However, the impact assessment does not include a detailed analysis of whether the expected effect of implementing the commitments will be significantly affected by a Member State's choice between different energy sources and the general structure of its energy supply. This is particularly important because confirmation of a significant effect would mean that the European Union legislature should have adopted the contested directive on a different legal basis, namely on the basis of Article 192(2) TFEU, instead of on the basis of Article 192(1) TFEU.

4. Breach of the principle of proportionality (Article 5(4) TEU).

The defendant institutions did not take into consideration the serious socio-economic costs that will be generated in Poland by implementing the obligations to reduce the emission of particular pollutants as from 2030. As a result of this, the implementation by Poland of the reduction commitments from 2030 onwards is liable to have serious negative socio-economic consequences for Poland. The expenditure incurred in order to implement those commitments may prove to be disproportionate to the expected effects.

It was not obviously necessary to set such high national emission reduction commitments for 2030 onwards in the directive in order to achieve the objectives set out in the directive.

5. Breach of the principle of the equality of Member States (Article 4(2) TEU) and of the principle of balanced development (fourth indent of Article 191(3) TFEU, in conjunction with Article 191(2) TFEU).

The emission reduction obligations imposed on individual Member States for the period from 2030 do not take into consideration the diverse economic situation, technological conditions and social conditions of the Member States, including the scale of the investments required in the different regions of the European Union. The reduction commitments were established using a standardised method, without regard to the real and diverse economic and social situation of individual Member States.

In addition, in establishing national emission reduction commitments for individual Member States for 2030 and onwards, the defendant institutions probably did not properly take into consideration the cross-border inflow of significant quantities of pollutants from areas in the immediate vicinity of the European Union into certain Member States, which may give rise to unequal treatment of Member States which have borders with third countries in comparison with States not concerned by the problem of the inflow of pollutants from outside the European Union.

(¹) OJ 2016 L 344, p. 1.

Appeal brought on 17 March 2017 by the European Union, represented by the Court of Justice of the European Union against the judgment of the General Court (Third Chamber, Extended Composition) delivered on 10 January 2017 in Case T-577/14, Gascogne Sack Deutschland and Gascogne v European Union

(Case C-138/17 P)

(2017/C 151/32)

Language of the case: French

Parties

Appellant: European Union, represented by the Court of Justice of the European Union (represented by: J. Inghelram and Á. M. Almendros Manzano, acting as agents)

Other parties to the proceedings: Gascogne Sack Deutschland GmbH, Gascogne, European Commission

Form of order sought

- set aside paragraph 1 of the operative part of the contested judgment;
- dismiss as unfounded Gascogne Sack Deutschland and Gascogne's claim, made at first instance, seeking a sum of EUR 187 571 for losses allegedly suffered as a result of making additional bank guarantee payments beyond a reasonable period;