In Poland's view, the defendant institutions infringed the principle of subsidiarity since there already exists in the European Union a legal system by means of which it is possible achieve the declared objectives for the ETS for buildings and road transport. Following the adoption of the contested directive, there are now two competing systems, whereby based on the existing system it is possible to achieve the objectives for the ETS for buildings and road transport at local level to a higher degree than at the level of the European Union as a whole.

5. Infringement of the principle of proportionality referred to in Article 5(4) TEU, read in conjunction with Article 191(2) TFEU by establishing the ETS for buildings and road transport, which is not necessary and entails disproportionate costs as compared with the intended objectives

   In Poland's view, the defendant institutions infringed the principle of proportionality in so far as the contested directive goes beyond what is necessary to achieve its objectives and moreover, it entails high costs as compared with the intended objectives.

6. Infringement of the principle of equal treatment (prohibition of discrimination) by precluding the possibility of using free allocation of allowances for the purposes of calculating the emissions generated by the operators of facilities in other sectors in the context of the ETS for buildings and road transport

   In Poland's view, the defendant institutions infringed the principle of equal treatment in so far as, by ruling out the right to use free allocation of allowances for the purposes of calculating emissions in ancillary sectors, the contested directive discriminated against operators of facilities in other sectors compared with operators of facilities in ETS sectors.

7. Infringement of the principle of sincere cooperation referred to in Article 4(3) TEU, in disregarding, during the legislative procedure, the reservations expressed by Poland

   In Poland's view, the defendant institutions infringed the principle of sincere cooperation in so far as they disregarded, during the legislative procedure, the reservations expressed by Poland as regards the social and legal consequences of the adoption of the directive and in so far as they adopted that directive without duly taking into consideration the reservations expressed.

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[1] OJ 2023 L 130, p. 134.

Action brought on 8 August 2023 — Republic of Poland v European Parliament and Council of the European Union

(Case C-512/23)

(2023/C 338/19)

Language of the case: Polish

Parties

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

Defendant: European Parliament, Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul in its entirety Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism [1]

— order the European Parliament and the Council of the European Union to pay the costs.

Pleas in law and main arguments

Poland invokes against the contested Regulation 2023/956 a plea in law alleging infringement of point (a) of the first subparagraph of Article 192(2) TFEU in so far as that regulation is incorrectly based on Article 192(1) TFEU, whereas the measures it lays down establishing a carbon border adjustment mechanism ('CBAM') are provisions of a primarily fiscal nature.

The contested regulation lays down taxation rules, and in any event fiscal provisions. Both the objective and nature of the provisions introducing the CBAM are above all fiscal. The provisions of the contested regulation establish a new public charge and set out all the conditions for its collection. The fiscal function of the CBAM takes precedence over the environmental function of that measure. In addition, unlike the Emission Trading System (ETS) of the European Union, the CBAM is not a market-based measure and, therefore, the conditions set out in the Court's case-law, which preclude a measure which forms part of the EU ETS from being regarded as a fiscal measure, are not satisfied.

[1] OJ 2023 L 130, p. 52

Action brought on 10 August 2023 — European Commission v Italian Republic

(Case C-519/23)

(2023/C 338/20)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: B.-R. Killman, D. Recchia, acting as Agents)

Defendant: Italian Republic

Form of order sought

The Commission claims that the Court should:

— declare that the Italian Republic has failed to fulfil the obligations imposed by Article 45 TFEU, not having reconstructed the former assistants' careers in order to guarantee the economic treatment due to them and the corresponding payment of arrears

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

The Commission maintains that the Italian Republic has not correctly applied Article 45 TFEU relating to the career reconstruction of university staff, hired previously by many Italian State universities with the qualification of 'assistant'.

The Commission recalls that the Court has already had the opportunity to rule on the former assistants' situation, at the time hired by six Italian State universities. In the judgment in case C-212/99, [1] the Court stated that the principle of equal treatment, of which Article 45 TFEU is an expression, not only prohibits overt discrimination based on nationality, but also any covert form of discrimination that, in fact, leads to the same result, [2] and that the legal framework then in force in Italy allowed six Italian universities to put in place discriminatory administrative and contractual practices failing to recognise career reconstruction for former assistants that ensured the same rights as national workers (including increases in salary, seniority and payment of social security contributions from the original recruitment date) . [3]

In the judgment in case C-119/04, [4] the Court examined the evolution of the Italian legal framework leading to decreto-legge 14 gennaio 2004, n. 2 — Disposizioni urgenti relative al trattamento economico dei collaboratori linguistici presso talune università ed in materia di titoli equipollenti [5] (Decree-Law of 14 January 2004, No 2 — Urgent provisions relating to the economic treatment of linguistic associates in certain universities and concerning equivalent qualifications). The Court concluded that that legal framework, not incorrect, allowed the universities concerned to reconstruct the career of the former assistants. [6]