Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

13 March 2019*

(Action for annulment — Directive (EU) 2016/2284 — Reduction of national emissions of certain atmospheric pollutants — Adoption of EU legal acts — Course of the legislative procedure — Article 4(3) TEU — Principle of sincere cooperation — Actual exercise of the EU legislature's discretion — Impact assessment — Sufficient assessment of the effects of the contested measure — Article 5(4) TEU — Principle of proportionality — Article 4(2) TEU — Equality of Member States before the Treaties — Article 191(2) TFEU — Environmental policy of the European Union — Consideration of the diversity of the regions of the European Union — Judicial review)

In Case C-128/17,

ACTION for annulment under Article 263 TFEU, brought on 10 March 2017,

Republic of Poland, represented by B. Majczyna, acting as Agent,

applicant,

supported by:

Hungary, represented by M.Z. Fehér, G. Koós and E. Tóth, acting as Agents,

Romania, represented by C. Canțăr, R.H. Radu, A. Wellman and M. Chicu, acting as Agents,

interveners,

v

European Parliament, represented by A. Tamás and A. Pospíšilová Padowska, acting as Agents,

Council of the European Union, represented by M. Simm, A.-Z. Varfi, K. Adamczyk Delamarre and A. Sikora-Kalėda, acting as Agents,

defendants,

supported by:

European Commission, represented by K. Petersen, K. Herrmann and G. Gattinara, acting as Agents,

intervener,

* Language of the case: Polish.

THE COURT (Sixth Chamber),

composed of J.-C. Bonichot (Rapporteur), President of the First Chamber, acting as President of the Sixth Chamber, E. Regan and C.G. Fernlund, Judges,

Advocate General: N. Wahl,

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 Republic of Poland asks the Court, primarily, to 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 (OJ 2016 L 344, p. 1) ('the contested directive'), and, in the alternative, to annul that directive in so far as it establishes national commitments for the reduction of such emissions for 2030 onwards.

Legal framework

The contested directive

2 Recitals 1, 3, 5 to 9, 10, 13, 14, 18 and 19 of the contested directive are worded as follows:

'(1) Significant progress has been achieved over the past 20 years in the Union in the field of anthropogenic air emissions and air quality, in particular through a dedicated Union policy, including the Communication from the Commission of 21 September 2005 entitled "Thematic Strategy on Air Pollution" (the "TSAP") [COM(2005) 446 final]. … However, as indicated in the Communication from the Commission of 18 December 2013 entitled "A Clean Air Programme for Europe" [COM(2013) 918 final] (the "revised TSAP"), significant negative impacts on and risks to human health and the environment remain.

…

(3) The revised TSAP sets out new strategic objectives for the period up to 2030 with a view to moving further towards the Union's long-term objective on air quality.

…

(5) Member States and the Union are parties to the United Nations Economic Commission for Europe (UNECE) Convention on Long-Range Transboundary Air Pollution of [13 November] 1979 (the "LRTAP Convention") and to several of its Protocols, including the Protocol to Abate Acidification, Eutrophication and Ground-level Ozone of 1999, which was revised in 2012 (the "revised Gothenburg Protocol").

(6) As regards the year 2020 and thereafter, the revised Gothenburg Protocol sets out new emission reduction commitments, taking the year 2005 as a base year, for each party regarding sulphur dioxide, nitrogen oxides, non-methane volatile organic compounds, ammonia and fine particulate matter, …

(7) The national emission ceiling regime established by 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)] should therefore be revised in order to align it with the international commitments of the Union and the Member States. To that effect, the national emission reduction commitments for any year from 2020 to 2029 in this Directive are identical to those set in the revised Gothenburg Protocol.

(8) Member States should implement this Directive in a way that contributes effectively to achieving the Union's long-term objective on air quality, as supported by the guidelines of the World Health Organisation, …

(9) This Directive should also contribute to achieving, in a cost-effective manner, the air quality objectives set out in Union legislation and to mitigating climate change impacts in addition to improving air quality globally and to improving synergies with Union climate and energy policies, while avoiding duplication of existing Union legislation.

(10) This Directive also contributes to reducing the health-related costs of air pollution in the Union by improving Union citizens' well-being, as well as to favouring the transition to a green economy.

…

(13) Member States should comply with the emission reduction commitments set out in this Directive from 2020 to 2029 and from 2030 onwards. In order to ensure demonstrable progress towards the 2030 commitments, Member States should identify indicative emission levels in 2025 which would be technically feasible and would not entail disproportionate costs, and should endeavour to comply with such levels. Where the 2025 emissions cannot be limited in accordance with the determined reduction trajectory, Member States should explain the reasons for that deviation as well as the measures that would bring the Member States back on their trajectory in their subsequent reports to be prepared pursuant to this Directive.

(14) The national emission reduction commitments set out in this Directive for 2030 onwards are based on the estimated reduction potential of each Member State contained in the TSAP Report no 16 of January 2015 ("TSAP 16"), on technical examination of the differences between national estimates and those in TSAP 16, and on the political objective to maintain the overall health impact reduction by 2030 (compared with 2005) as close as possible to that of the Commission proposal for this Directive. To enhance transparency, the Commission should publish the underlying assumptions used in TSAP 16.

…

(18) Each Member State should draw up, adopt and implement a national air pollution control programme with a view to complying with its emission reduction commitments, and to contributing effectively to the achievement of the air quality objectives. …

(19) In order to reduce emissions from anthropogenic sources, national air pollution control programmes should consider measures applicable to all relevant sectors, including agriculture, energy, industry, road transport, inland shipping, domestic heating and use of non-road mobile machinery and solvents. However, Member States should be entitled to decide on the measures to adopt in order to comply with the emission reduction commitments set out in this Directive.'

3 Article 1 of the contested directive provides:

'1. In order to move towards achieving levels of air quality that do not give rise to significant negative impacts on and risks to human health and the environment, this Directive establishes the emission reduction commitments for the Member States' anthropogenic atmospheric emissions of sulphur dioxide (SO_2), nitrogen oxides (NOx), non-methane volatile organic compounds (NMVOC), ammonia (NH_3) and fine particulate matter ($PM_{2.5}$) and requires that national air pollution control programmes be drawn up, adopted and implemented and that emissions of those pollutants and the other pollutants referred to in Annex I, as well as their impacts, be monitored and reported.

2. This Directive also contributes to achieving:

(a) the air quality objectives set out in Union legislation and progress towards the Union's long-term objective of achieving levels of air quality in line with the air quality guidelines published by the World Health Organisation;

(b) the Union's biodiversity and ecosystem objectives in line with the 7th Environment Action Programme;

(c) enhanced synergies between the Union's air quality policy and other relevant Union policies, in particular climate and energy policies.'

4 Article 4 of that directive provides:

'1. Member States shall, as a minimum, limit their annual anthropogenic emissions of sulphur dioxide, nitrogen oxides, non-methane volatile organic compounds, ammonia and fine particulate matter in accordance with the national emission reduction commitments applicable from 2020 to 2029 and from 2030 onwards, as laid down in Annex II.

2. Without prejudice to paragraph 1, Member States shall take the necessary measures aimed at limiting their 2025 … emissions …. The indicative levels of those emissions shall be determined by a linear reduction trajectory established between their emission levels defined by the emission reduction commitments for 2020 and the emission levels defined by the emission reduction commitments for 2030.

Member States may follow a non-linear reduction trajectory if this is economically or technically more efficient, and provided that as from 2025 it converges progressively on the linear reduction trajectory and that it does not affect any emission reduction commitment for 2030. Member States shall set out that non-linear reduction trajectory and the reasons for following it in the national air pollution control programmes to be submitted to the Commission in accordance with Article 10(1).

Where the emissions for 2025 cannot be limited in accordance with the determined reduction trajectory, Member States shall explain the reasons for that deviation as well as the measures that would bring the Member States back on their trajectory in the subsequent informative inventory reports to be provided to the Commission in accordance with Article 10(2).

…'

5 Under Article 5(3) of the contested directive:

'If in a given year a Member State, for which one or more reduction commitments laid down in Annex II are set at a more stringent level than the cost-effective reduction identified in TSAP 16, cannot comply with the relevant emission reduction commitment after having implemented all cost-effective measures, it shall be deemed to comply with that relevant emission reduction commitment for a maximum of five years, provided that for each of those years it compensates for that non-compliance by an equivalent emission reduction of another pollutant referred to in Annex II.'

6 Article 14(3) of the directive is worded as follows:

'The Commission shall publish on its website:

(a) the underlying assumptions considered for each Member State for the definition of their national emission reduction potential used to prepare TSAP 16;

…'

7 Annex II to the contested directive contains a list setting out, for each Member State, the national emission reduction commitments, valid for the period from 2020 to 2029 and from 2030 onwards.

8 Under Annex III, Part I, point 1, to that directive:

'The initial national air pollution control programmes referred to in Articles 6 and 10 shall at least cover the following content:

…

(b) the policy options considered to comply with the emission reduction commitments for the period between 2020 and 2029 and for 2030 onwards and the intermediate emission levels determined for 2025 and to contribute to further improve the air quality, and their analysis, including the method of analysis; where available, the individual or combined impacts of the policies and measures on emission reductions, air quality and the environment and the associated uncertainties;

…

(d) where relevant, an explanation of the reasons why the indicative emission levels for 2025 cannot be met without measures entailing disproportionate costs;

…'

The Interinstitutional Agreement on Better Law-Making

9 The Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission of 13 April 2016, entitled 'Better Law-Making' (OJ 2016 L 123, p. 1) ('the Interinstitutional Agreement on Better Law-Making'), includes, in Title III, headed 'Tools for better law-making', points 12 to 15 of that agreement, which read as follows:

'12. The three Institutions agree on the positive contribution of impact assessments in improving the quality of Union legislation.

Impact assessments are a tool to help the three Institutions reach well-informed decisions and not a substitute for political decisions within the democratic decision-making process. Impact assessments must not lead to undue delays in the law-making process or prejudice the co-legislators' capacity to propose amendments.

Impact assessments should cover the existence, scale and consequences of a problem and the question whether or not Union action is needed. They should map out alternative solutions and, where possible, potential short and long-term costs and benefits, assessing the economic, environmental and social impacts in an integrated and balanced way and using both qualitative and quantitative analyses. The principles of subsidiarity and proportionality should be fully respected, as should fundamental rights. … Impact assessments should be based on accurate, objective and complete information and should be proportionate as regards their scope and focus.

13. The Commission will carry out impact assessments of its legislative and non-legislative initiatives …

14. The European Parliament and the Council, upon considering Commission legislative proposals, will take full account of the Commission's impact assessments. …

15. The European Parliament and the Council will, when they consider this to be appropriate and necessary for the legislative process, carry out impact assessments in relation to their substantial amendments to the Commission's proposal. The European Parliament and the Council will, as a general rule, take the Commission's impact assessment as the starting point for their further work. The definition of a "substantial" amendment should be for the respective Institution to determine.'

Background to the dispute

10 The contested directive forms part of the measures adopted by the European Union in the field of anthropogenic air emissions and air quality. It falls within the framework of a Union strategic policy comprising, on the date of adoption of that directive, the following aspects, among others:

– the 2005 strategic policy on air pollution resulting from the Sixth Action Programme of 2002 established by Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme (OJ 2002 L 242, p. 1);

– the EU legislative acts implementing that strategy, such as 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 Directive 2001/81; and

– the activities of the European Union at international level, particularly the LRTAP Convention, approved by the European Union by Council Decision 81/462/EEC of 11 June 1981 (OJ 1981 L 171, p. 11), and the Protocol to that convention on Long-Range Transboundary Air Pollution to Abate Acidification, Eutrophication and Ground-Level Ozone, adopted on 30 November 1999 ('the Gothenburg Protocol'), approved by the European Union by Council Decision 2003/507/EC of 13 June 2003 (OJ 2003 L 179, p. 1).

11 The revised Gothenburg Protocol was approved by the European Union by Council Decision (EU) 2017/1757 of 17 July 2017 (OJ 2017 L 248, p. 3).

12 In 2013, the Commission published its revised TSAP showing that negative impacts on and significant risks to human health and the environment on account of air pollution remained. Against that background, on 18 December 2013, the Commission submitted a proposal for a directive of the European Parliament and of the Council on the reduction of national emissions of certain atmospheric pollutants and amending Directive 2003/35/EC (COM(2013) 920 final; 'the proposal for a directive').

13 In that proposal, national emission reduction commitments for 2020 and 2030 were drawn up based on data set out in the Commission's impact assessment of 18 December 2013 (SWD(2013) 531 final; 'the impact assessment'). In carrying out the impact assessment, the Commission relied on data generated using the 'GAINS' modelling system ('the GAINS system') of the International Institute for Applied System Analysis ('IIASA'), in its capacity as consultant to the Commission.

14 The European Parliament and the Council examined the proposal for a directive. Within the Council, that proposal and the impact assessment were discussed at 24 working group meetings, 13 meetings of the Committee of Permanent Representatives (Coreper) and 4 meetings at ministerial level between 2014 and 2016. Moreover, each Council Presidency organised informal bilateral meetings with all of the Member States, in part with the support of the Commission, to clarify specific issues concerning a number of them. The data provided in the impact assessment were updated on the basis of 17 successive reports prepared by IIASA, entitled 'TSAP reports', numbered 1 to 16b.

15 On 16 December 2015, the Council adopted a general approach on the proposal for a directive. At the beginning of 2016, it initiated discussions with the Parliament. An informal agreement between the two institutions was approved by Coreper on 29 June 2016.

16 At the Council meeting of 17 October 2016, the Republic of Poland, Hungary and Romania expressed concern about the economic impact of the national emission reduction commitments set out in the proposal for a directive and about the methodology used to determine those commitments.

17 Following the vote of the Parliament on 23 November 2016, the contested directive was voted upon in the Council on 8 December 2016. It was adopted in Strasbourg on 14 December 2016.

Forms of order sought and procedure before the Court

18 The Republic of Poland claims that the Court should:

- principally, annul the contested directive;
- in the alternative, annul Article 4(1) and (2) and Article 14(3)(a) of that directive as well as Annex II and Annex III, Part I, point 1(b) and (d), thereto; and
- order the Parliament and the Council to pay the costs.

19 The Parliament and the Council contend that the Court should:

- dismiss the action in its entirety; and
- order the Republic of Poland to pay the costs.

20 By decision of 30 August 2017, Hungary and Romania were granted leave to intervene in support of the form of order sought by the Republic of Poland. On the same date, the Commission was granted leave to intervene in support of the form of order sought by the Parliament and the Council.

The action

The third plea in law

Arguments of the parties

21 By its third plea, which should be examined first, the Republic of Poland submits that the Parliament and the Council infringed the obligation to carry out a proper impact assessment of the contested directive before its adoption.

22 It claims that point 13 of the Interinstitutional Agreement on Better Law-Making requires the Commission to conduct an impact assessment in cases where a legal act is likely to have a significant impact. Under point 12 of that agreement, impact assessments carried out within the framework of the law-making process should consider the existence, scale and consequences of a problem. They should, it is argued, take account of costs and economic, environmental and social impacts. Such assessments should also be proportionate as regards their scope and focus and be based on objective, complete and accurate information. In accordance with the Commission's guidelines of 7 July 2017 on the application of the Interinstitutional Agreement on Better Law-Making (SWD(2017) 350 final), the Commission is required to carry out a sectoral analysis. It therefore has no discretion as regards the content of an impact assessment.

23 According to the Republic of Poland, the impact assessment at issue does not satisfy those requirements. The costs related to the national emission reduction commitments and the economic implications for the sectors concerned were not examined properly or were underestimated. Furthermore, the data used to evaluate the positive effects of the contested directive are not reliable.

24 Those shortcomings affect, in particular, the emission reduction potential and the costs of the necessary measures in the sectors of agricultural production, individual transport and electricity generation. The same is true of the modernisation of domestic heating.

25 In addition, the Republic of Poland asserts that the impact assessment is too general as it examines together the effects of all of the measures adopted as part of the 'clean air' package, namely the contested directive, Directive (EU) 2015/2193 of the European Parliament and of the Council of 25 November 2015 on the limitation of emissions of certain pollutants into the air from medium combustion plants (OJ 2015 L 313, p. 1) and Decision 2017/1757. It also fails to take account of the specific situation of each Member State.

26 In view of the foregoing, it is argued, it is impossible to estimate the costs of implementing the contested directive in Poland.

27 Moreover, during the legislative procedure, the Parliament and the Council amended substantial aspects of the proposal for a directive, particularly as regards the rate of reduction of fine particulate matter in Poland. For that reason, so the Republic of Poland claims, the impact assessment should have been updated, as required by point 15 of the Interinstitutional Agreement on Better Law-Making. Since the impact assessment had been drawn up in 2013, the update was also necessary in order to determine whether it was still valid for 2016.

28 Furthermore, the Republic of Poland argues that it is apparent from the impact assessment that the implementation of the national emission reduction commitments might require changes to the energy supply structure of the Member States. In those circumstances, the contested directive should have

been adopted unanimously on the basis of Article 192(2) TFEU, which imposes such a voting quorum in cases where measures significantly affect a Member State's choice between different energy sources and the general structure of its energy supply.

29 The Parliament and the Council contend that this plea should be rejected.

Findings of the Court

30 In support of its third plea, the Republic of Poland submits, in essence, that the procedure for the adoption of the contested directive was irregular due to the shortcomings in the impact assessment, particularly as regards the implications of the planned measures for the economy of the Member States, especially the Republic of Poland.

31 It should be noted, in the first place, that, as the Parliament rightly points out, the form in which the basic data taken into account by the EU legislature are recorded is irrelevant. The EU legislature is entitled to take into account not only the impact assessment, but also any other source of information (see, by analogy, judgments of 8 July 2010, *Afton Chemical*, C-343/09, EU:C:2010:419, paragraphs 36, 37 and 40, and of 4 May 2016, *Pillbox 38*, C-477/14, EU:C:2016:324, paragraphs 64 to 66).

32 In order to adopt the contested directive, the EU legislature relied on the impact assessment, the data contained in the GAINS system, the TSAP reports and a sensitivity analysis, a summary of which is contained in Council Document No 11265/16 of 14 July 2016.

33 As regards, first, the impact assessment, this document, as indicated by the Council and the Commission, sets out the costs of complying with the commitments for each Member State and for each proposed option, expressed in EUR million and as a percentage of gross domestic product (GDP). The costs of complying with the commitments are also set out for each economic sector at EU level.

34 The impact assessment examines five policy options which are differentiated by the envisaged emission reduction levels. For each option, it provides, on the basis of estimates and forecasts, an evaluation of the investment needed to implement the option in question and of the resulting direct benefits and other benefits.

35 Secondly, as regards the GAINS system, this system, as the Council points out, makes it possible to examine cost-effective emission control strategies by replicating as far as possible historic emissions and by establishing, on that basis, projections of emissions of certain air pollutants for each country. The data used for that purpose are taken from international energy and industry statistics, emission inventories and data supplied by the countries concerned themselves. The GAINS system works by making available to the Member States all of the data enabling them to adduce evidence in support of the alternative assumptions submitted for consideration. References to the updated framework are included in the impact assessment. Detailed data on the parameters used for each sector in the different Member States were published on the GAINS website so that Member States could identify the specific assumptions made in respect of their situation.

36 The Commission correctly states in this connection that the GAINS system provides detailed information on each sector of the economy of each Member State as regards the emissions produced, the potential for reducing those emissions and the costs associated with such a reduction.

37 As the Parliament points out, those data were examined in close cooperation with national authorities and experts. Moreover, it is not disputed that the Member States had access to the GAINS system and to the TSAP reports compiled by IIASA.

38 Furthermore, it is apparent from the observations of the Parliament and the Council, supported by the Commission, that IIASA updated its calculations after the publication of the impact assessment and, against that background, adopted TSAP reports 11 to 16b. In order to iron out a number of discrepancies between the national assumptions and those of IIASA, it published TSAP reports 13 and 14 and recalculated the emission reduction commitments in TSAP report 16. In its application, the Republic of Poland, moreover, acknowledges that the examination of the variations between the estimates of the different Member States and those of IIASA were published in several TSAP reports.

39 As the Council points out, with the support of the Commission, the Member States also had the opportunity to submit their views on the divergences between their cost estimates and those of IIASA within the framework of the bilateral discussions held by the Council Presidency. The outcome of those discussions is the subject of TSAP report 16, which is not contested by the Republic of Poland.

40 Finally, a sensitivity analysis was carried out in order to determine definitively the extent of the national emission reduction commitments for the period between 2020 and 2029 and from 2030 onwards, as set out in Annex II to the contested directive. As mentioned in paragraph 32 of the present judgment, Council Document No 11265/16 of 14 July 2016 contains a summary of that analysis. A complete version of it was sent to the Polish authorities on 13 May 2016, as noted by the Commission. In the sensitivity analysis, a check was carried out to ascertain whether the Member States' own estimates relating to certain assumptions affected the feasibility of the emission reduction commitments proposed in TSAP report 16.

41 It follows from the foregoing considerations that the Republic of Poland is not entitled to claim that the data taken into account by the EU legislature in order to adopt the contested directive were incomplete as regards the individual situation of the Republic of Poland, since those data were compiled by IIASA jointly with representatives of that Member State and, in particular, on the basis of data supplied by the latter. Moreover, as is apparent from Council Document No 11265/16 of 14 July 2016 (pages 66 and 67), the Republic of Poland did not forward all of the required information in respect of some of the pollutants covered by the contested directive.

42 For the same reasons and, in particular, since the EU legislature also relied on other information at its disposal, the Republic of Poland's argument that the impact assessment was vague, insufficient and overly general cannot succeed.

43 In the second place, concerning the Republic of Poland's contention that the Parliament and the Council amended substantial aspects of the proposal for a directive and ought therefore to have updated the impact assessment, in accordance with point 15 of the Interinstitutional Agreement on Better Law-Making, suffice it to note that that provision does not, on any view, contain a definite obligation for the institutions concerned. It provides only for the option to carry out such an update where the Parliament and the Council 'consider this to be appropriate and necessary for the legislative process'.

44 In any event, the Republic of Poland cannot take issue with the Parliament and the Council for having based the adoption of the contested directive on data that were no longer up to date. The updating of the available data was a constant feature of the decision-making process, as evidenced, in particular, by the TSAP reports and the sensitivity analysis mentioned in the preceding paragraphs of the present judgment.

45 It follows from the foregoing that, during the legislative procedure, the Parliament and the Council took into account the available scientific data and information in order actually to exercise their discretion.

46 In the third place, the Republic of Poland's claims that the contested directive should have been adopted on the basis of paragraph 2, rather than paragraph 1, of Article 192 TFEU must be rejected as ineffective in the context of this plea. By its third plea, the Republic of Poland seeks to establish only that the impact assessment was flawed; it does not challenge the choice of the legal basis for the contested directive.

47 The third plea in law must therefore be rejected.

The first and second pleas in law

Arguments of the parties

48 By its first and second pleas, the Republic of Poland submits that the Parliament and the Council infringed the principles of sincere cooperation, transparency and openness and the obligation to state reasons for legal acts.

49 It claims, first, that the negotiations on the national emission reduction commitments were discriminatory and opaque and, second, that it was deprived of procedural safeguards, such as the opportunity to verify the assumptions underlying those commitments.

50 According to the Republic of Poland, it follows from the judgment of 24 June 1992, *Commission* v *Greece* (C-137/91, EU:C:1992:272), that the principle of sincere cooperation, as enshrined in Article 4(3) TEU, may independently form the basis for an action before the Court, and from the judgment of 14 June 2016, *Parliament* v *Council* (C-263/14, EU:C:2016:435), that the breach of that principle justifies the annulment of an EU legal act, even where there has been no breach of the legislative procedure provided for in the FEU Treaty.

51 The Republic of Poland, supported by Hungary and Romania, maintains that, if the principle of sincere cooperation is to be observed in full during the procedure leading to the adoption of an EU legal act, the Council is required to forward, at the preparatory stage, information enabling the impact of such an act on all Member States to be understood. The judgment of 5 December 2017, *Germany* v *Council* (C-600/14, EU:C:2017:935, paragraph 107), in its view, supports that interpretation.

52 In addition, the principles of sincere cooperation, transparency and openness and the obligation to state reasons apply to the legislative process and ensure its proper functioning, which is apparent from the Interinstitutional Agreement on Better Law-Making.

53 The Republic of Poland states that, throughout the procedure leading to the adoption of the contested directive, it expressed reservations as to the conduct of the negotiations. It also requested further information on the ground that the assumptions and data used to determine the national emission reduction commitments were, in part, unknown.

54 Indeed, it argues, certain key information was not to be found in either the GAINS system or IIASA's publications. In particular, the Republic of Poland claims that it was unable to verify certain assumptions regarding the sector-by-sector breakdown of sources of air pollution, the assumptions concerning the development of Member States' economies and the emission forecasts for 2030 onwards. The manner in which the general health objective was translated into emission reduction commitments and how those commitments were determined for each Member State were not disclosed. The Republic of Poland unsuccessfully requested a description of each subcategory of emission sources considered.

55 In the absence of access to all of the assumptions used and to the modelling tools, programming and parameters, the GAINS system could not, the Republic of Poland argues, fill those gaps. The same is true of the 'Primes' model used by the Commission to generate input data for the GAINS system. Council Document No 11265/16 of 14 July 2016 does not contain the necessary information either, just a brief description of the methodology used.

56 In support of the form of order sought by the Republic of Poland, Romania argues that Council Document No 11265/16 of 14 July 2016 does not contain the full set of technical information justifying the emission reduction commitments imposed on the former. Moreover, that document was sent late, that is, after the draft directive had been voted on in the Council on 29 June 2016.

57 Furthermore, according to the Republic of Poland, certain underlying assumptions are wrong, especially those concerning the rate of replacement of vehicles equipped with combustion engines and ammonia emissions from agriculture. The Commission did not correct those errors, even though the Republic of Poland claims that it asked it to do so.

58 The Republic of Poland asserts that, despite its complaints, the problems which it had reported were not taken into account by the Council, which thus infringed its right to participate fully in the legislative process.

59 The principle of sincere cooperation includes the right to be heard, which allows a party which has been adversely affected by a measure to make known its view effectively. That right was infringed because the Republic of Poland could not have known about the socio-economic consequences of the emission reduction commitments imposed on the Member States.

60 The principle of sincere cooperation, in its view, also requires cooperation in good faith between the institutions and the Member States, which should agree on the envisaged course of action and the data taken into account for that purpose. The institutions were required to engage with the Republic of Poland and to state the reasons for dismissing the objections raised by that Member State. The mere reference to the analytical models of the GAINS system or to other documents prepared by IIASA, which may be consulted by all Member States, is not sufficient in that respect.

61 Romania also submits that the principle of transparency is enshrined in Article 19(1) of Council Decision 2009/937/EU of 1 December 2009 adopting the Council's Rules of Procedure (OJ 2009 L 325, p. 35) ('the Council's Rules of Procedure'). The scope of that principle is given concrete expression in Article 20 of those rules, read in conjunction with Annex V thereto, which provides that 'the Presidency shall convey to delegations as soon as possible when Coreper's proceedings are being prepared all the information necessary to allow thorough preparation of Coreper's proceedings'.

62 In the present case, the period between the notification, on 28 June 2016, of the new proposed wording of Annex II to the contested directive and the approval of that proposal in Coreper, on 29 June 2016, in order to reach an agreement with the Parliament, did not allow for thorough preparation. In addition, the methodology for calculating national commitments was not disclosed to the Member States until 18 July 2016.

63 That finding; it is argued, is not invalidated by the fact that the contested directive was adopted following a vote of the Council only on 8 December 2016, because, after the vote of 29 June 2016, the Member States were de facto deprived of all opportunity to set out their respective positions.

64 Moreover, Romania claims that the provisions of Article 5 of Annex II to the Council's Rules of Procedure, which provides for the application of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43), were not complied with during the handling of the Republic of Poland's requests for information.

65 The Parliament and the Council contend that these pleas must be rejected.

Findings of the Court

66 It is apparent, particularly from the arguments which are essentially reproduced in paragraphs 51, 52 and 58 to 60 of the present judgment, that, by pleading a breach of the principle of transparency, of the right to be heard and of the duty to state reasons, the Republic of Poland seeks only to describe the obligations with which the EU institutions are required to comply during the legislative process, in accordance with the principle of sincere cooperation. Consequently, the arguments put forward by that Member State in support of its first and second pleas must be assessed solely in the light of that latter principle.

67 It should be recalled that, under Article 4(3) TEU, the European Union and the Member States are required, in full mutual respect, to assist each other in carrying out tasks which flow from the Treaties.

68 It is therefore necessary to determine, taking account of the course of the decision-making process leading to the adoption of the contested directive, as evidenced by the file submitted to the Court, whether the Parliament and the Council failed to fulfil their duty of sincere cooperation.

69 As is apparent from paragraph 14 of the present judgment, the proposal for a directive and the impact assessment were discussed within the Council at 24 working group meetings, 13 Coreper meetings and 4 meetings at ministerial level between 2014 and 2016. Moreover, each Council Presidency organised informal bilateral meetings with all of the Member States, in part with the support of the Commission.

70 As is also apparent from paragraphs 32 to 41 of the present judgment, during the legislative process, the Republic of Poland had access to the full set of documents on which the EU legislature relied in order to adopt the contested directive and was able to submit comments on the data contained in those documents and on the assumptions used.

71 That finding is not invalidated by Romania's claim that Council Document No 11265/16 of 14 July 2016 was sent to the Republic of Poland belatedly. That document was in fact available several months before the Council adopted the contested directive on 8 December 2016.

72 The Republic of Poland also argues that the information available to the EU legislature and the Member States during the legislative process leading to the adoption of the contested directive was insufficient to enable all of the implications of that directive to be understood or was even, in part, incorrect.

73 However, in areas in which the EU legislature has a broad discretion, the Court need satisfy itself only that the institution which adopted the contested measure is able to show that, in adopting the act, it actually exercised its discretion and, for that purpose, is able to set out clearly and unequivocally the basic facts which had to be taken into account as the basis of the contested measures of that act and on which the exercise of its discretion depended (see, to that effect, judgment of 21 June 2018, *Poland* v *Parliament and Council*, C-5/16, EU:C:2018:483, paragraphs 151 to 153). It is clear from paragraph 45 of the present judgment that the EU legislature indeed fulfilled that duty by taking account of the full range of extensive data available.

74 The duty of sincere cooperation cannot have a wider scope, in the sense of requiring the EU legislature, in all circumstances, to produce, at the request of a Member State, documents and information that are allegedly missing or to correct information available to it before being able to adopt an act. Such an interpretation could prevent the institutions from exercising their discretion and block the legislative process.

75 It is, admittedly, true that the duty of sincere cooperation includes the obligation of mutual assistance, which entails, among other things, the exchange of relevant information between the institutions and the Member States during the legislative process. However, that obligation cannot provide a means for one of those States, in the event of disagreement as to the adequacy, relevance or accuracy of the available data, to challenge the lawfulness of the decision-making process on that ground alone.

76 It is apparent from the case-law of the Court in this regard that the adoption of a legislative measure with due regard for the relevant provisions of the FEU Treaty, despite the opposition of a minority of Member States, cannot constitute a breach of the duty of sincere cooperation devolving on the Parliament and the Council (see, to that effect, judgments of 13 October 1992, *Portugal and Spain* v *Council*, C-63/90 and C-67/90, EU:C:1992:381, paragraph 53, and of 23 November 1999, *Portugal* v *Council*, C-149/96, EU:C:1999:574, paragraph 66).

77 The judgment of 5 December 2017, *Germany* v *Council* (C-600/14, EU:C:2017:935), cannot cast doubt on that finding since, in paragraph 107 of that judgment, on which the Republic of Poland relies, the Court examined only whether, in the light of the principle of sincere cooperation, the decision-making process leading to the adoption of the contested measure in the case giving rise to that judgment had been conducted with the requisite speed, regard being had to the relevant circumstances.

78 Concerning Romania's argument, essentially reproduced in paragraphs 61 to 63 of the present judgment, that the legislative process was not conducted in accordance with the Council's Rules of Procedure because some information and documents were sent belatedly, it should be observed that, by its first and second pleas, the Republic of Poland submits that it was not in possession of the information necessary to enable it to participate effectively in the procedure leading to the adoption of the contested directive. However, the Republic of Poland does not claim that the Council's Rules of Procedure were infringed or that information or documents were sent to it belatedly.

79 In this regard, it must be recalled that a party who, pursuant to Article 40 of the Statute of the Court of Justice of the European Union, is granted leave to intervene in a case submitted to the Court may not alter the subject matter of the dispute as defined by the forms of order sought and the pleas in law raised by the main parties. It follows that arguments submitted by an intervener are not admissible unless they come within the framework provided by those forms of order and pleas in law (judgment of 7 October 2014, *Germany* v *Council*, C-399/12, EU:C:2014:2258, paragraph 27).

80 Accordingly, Romania's argument in that regard must be rejected.

81 The same is true of Romania's argument alleging breach of Regulation No 1049/2001, since the Republic of Poland does not argue that it sent the Council a request for access to documents under Regulation No 1049/2001 or that the Parliament and the Council infringed that regulation.

82 In the light of the foregoing, the first and second pleas of the Republic of Poland must be dismissed.

The fourth plea in law

Arguments of the parties

83 By its fourth plea, the Republic of Poland argues that the measures needed to comply with the national emission reduction commitments provided for in the contested directive are likely, from its perspective, to have an adverse effect on some sectors and to involve particularly heavy socio-economic costs. The EU legislature failed to take that into account and thus committed a manifest error by adopting the contested directive, which constitutes an infringement of the principle of proportionality as enshrined in Article 5(4) TEU.

84 It submits that the Court's review of the proportionality of a measure is not limited to manifest errors but also extends to the weighing up of competing interests and the assessment of whether the contested measures are appropriate, whether they are necessary, and whether Member States are able to implement them. The Court should also examine whether there are less restrictive alternatives, the relationship between the costs and the aim pursued, and the options for reducing the burden on economic operators.

85 For the purpose of that examination, the revised Gothenburg Protocol, mentioned in the recitals of the contested directive, cannot serve as a reference framework. It was not ratified by all Member States and does not form part of the EU legal order.

86 As for the costs of implementing the contested directive, the Republic of Poland estimates that these stand at EUR 557 million per year for that Member State, over and above the costs of implementing Directive 2008/50. Those costs and the adverse effects resulting from the national emission reduction commitments for industrial and non-industrial sectors, namely transport, agriculture and the urban household sector, are, it argues, significantly higher than the benefits flowing from them.

87 In the agriculture sector, more than two thirds of farms are small and could be exempted from the measures designed to reduce ammonia emissions, under Annex III, Part 2, point C, to the contested directive. Consequently, one third of national farms would have to shoulder the entire burden of such measures. In the transport sector, most of the vehicles comprising the vehicle stock in Poland are more than 10 years old. It is estimated that replacing them would cost between EUR 1.3 billion and EUR 3.9 billion, without that measure achieving the required emission reduction level. The cost of replacing domestic heating appliances would be around EUR 12.7 billion for the country as a whole. Moreover, the abandonment of coal, which is the cheapest energy source, would cause energy prices to increase significantly.

88 In view of the structure of those sectors, reducing emissions in accordance with the contested directive would hit people on low incomes harder. The Republic of Poland is not in a position to pass that burden on to other persons. In particular, the polluter-pays principle and the principle of equal treatment preclude the transfer of responsibility to large farms. The competitiveness of small farms is thus under threat.

89 Furthermore, the Republic of Poland asserts that the national emission reduction commitments and the imposition of a short period for their implementation go beyond what is necessary to achieve the objective set by the EU legislature. The same is true of the obligation for Member States to establish, as of 2025, an indicative level of emissions by means of a linear reduction trajectory defined according to the emission reduction commitments for 2020 and for 2030. A mechanism for gradual fulfilment of the commitments between 2030 and 2035 was feasible and would have allowed the costs to be spread over time. Those costs might also be lower since the price of technology could decrease as time passes.

90 The Republic of Poland states, moreover, that the binding nature of the timetable laid down by the contested directive is contrary to Article 288 TFEU, under which a directive leaves to Member States the choice of form and methods for its implementation.

91 It claims that the flexibility mechanism provided for in Article 5(3) of the contested directive does not diminish the scale of the national emission reduction commitments since the conditions for the application of that mechanism are overly restrictive.

92 The examination of the proportionality of the contested directive also shows that the Republic of Poland will have to bear a heavier burden than the other Member States. As regards the reduction of ammonia emissions, the target set for the Republic of Poland is a 17% reduction of such emissions, whereas the average target set at EU level is around 13%. For fine particulate matter ($PM_{2.5}$), the Republic of Poland is required to secure a 58% reduction compared with the average of 27%. Although the emission reduction potential in Poland is, admittedly, high, it cannot justify the imposition of disproportionate obligations on that Member State.

93 The Parliament and the Council contend that this plea must be rejected.

Findings of the Court

94 As a preliminary point, it must be recalled that, according to settled case-law of the Court, the principle of proportionality requires that acts of the EU institutions be appropriate for attaining the legitimate objectives pursued by the legislation at issue and do not go beyond what is necessary in order to achieve those objectives; when there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (see, inter alia, judgments of 4 May 2016, *Poland* v *Parliament and Council*, C-358/14, EU:C:2016:323, paragraph 78, and of 6 September 2017, *Slovakia and Hungary* v *Council*, C-643/15 and C-647/15, EU:C:2017:631, paragraph 206).

95 With regard to the judicial review of whether that principle has been observed, in an area of evolving and complex technology, the EU legislature has a broad discretion, in particular as to the assessment of highly complex scientific and technical facts in order to determine the nature and scope of the measures that it adopts, whereas review by the EU judicature has to be limited to verifying whether the exercise of such powers has been vitiated by a manifest error of appraisal or a misuse of powers, or whether the legislature has manifestly exceeded the limits of its discretion. In such a context, the EU judicature cannot substitute its assessment of scientific and technical facts for that of the EU legislature on which the Treaty has conferred that task (judgment of 21 June 2018, *Poland* v *Parliament and Council*, C-5/16, EU:C:2018:483, paragraph 150).

96 In the light of those considerations, it is necessary to determine whether, by adopting the measures referred to in the contested directive, the EU legislature committed a manifest error and whether the resultant disadvantages for certain economic operators are wholly disproportionate to the advantages otherwise offered by those measures (see, to that effect, judgment of 21 June 2018, *Poland* v *Parliament and Council*, C-5/16, EU:C:2018:483, paragraph 170).

97 As is apparent from recital 1 of the contested directive, despite the progress that has already been made in the European Union in the field of anthropogenic air emissions and air quality, significant negative impacts on and risks to human health and the environment remain. According to recital 8, the implementation of that directive by Member States should also contribute to achieving the air quality objectives set out in EU legislation and progress towards the EU's long-term objective of achieving levels of air quality in line with the air quality guidelines published by the World Health Organisation (WHO).

98 Article 1(1) and Article 4 of the contested directive lay down several measures making it possible to move towards achieving levels of air quality that do not give rise to significant negative impacts on and risks to human health and the environment, particularly the two-step reduction of emissions for the period between 2020 and 2029 and from 2030 onwards.

99 As appears from recital 7 of the contested directive, the national emission reduction commitments for the period between 2020 and 2029, listed in Annex II thereto, must enable the European Union to meet the international commitments of the Member States and the European Union. Those commitments are identical to those set out in the revised Gothenburg Protocol, which, as noted in paragraph 11 of the present judgment, was approved on behalf of the European Union by Decision 2017/1757.

100 Moreover, it follows from the impact assessment that the national emission reduction commitments for the period between 2020 and 2029 could be reached if the EU legislation on air quality in force in 2012 were fully implemented.

101 As stated in recital 14 of the contested directive, the national emission reduction commitments which it sets out for 2030 onwards are based, in particular, on the estimated reduction potential of each Member State, on technical examination of the differences between national estimates and those in TSAP 16, and on the political objective to maintain the overall health impact reduction by 2030, compared with 2005, as close as possible to that of the proposal for a directive.

102 For the achievement of that last objective, Article 4(2) of that directive, read in the light of recital 13 thereof, lays down a mechanism designed to ensure that demonstrable progress is made with a view to reaching the emission reduction level applicable from 2030 onwards. That provision requires Member States to ensure that national emissions produced in 2025 are at a level which is the result of a linear reduction trajectory between the commitments for 2020 and those for 2030. In that way, the contested directive promotes a gradual and continuous reduction.

103 In the light of all those considerations, it does not appear that the EU legislature committed a manifest error by imposing an obligation on Member States to limit, as a minimum, their annual anthropogenic emissions of sulphur dioxide, nitrogen oxides, non-methane volatile organic compounds, ammonia and fine particulate matter in accordance with the national emission reduction commitments applicable from 2020 to 2029 and from 2030 onwards, mentioned in Annex II to the contested directive.

104 That finding cannot be called into question by the Republic of Poland's argument that the adverse consequences arising for it from complying with those commitments in the agriculture and transport sectors and for low-income households are disproportionate.

105 It should be pointed out, as the Parliament and the Council do, that neither the allocation of costs related to the performance of the emission reduction commitments nor the method of financing them was determined by the contested directive, as is apparent from recital 19 thereof.

106 Furthermore, the EU legislature is not obliged to take into consideration the particular situation of a Member State if the EU measure concerned has an impact in all Member States and requires that a balance between the different interests involved should be ensured, taking account of the objectives of that measure. Therefore, the attempt to strike such a balance, taking into account not the particular situation of a single Member State, but that of all EU Member States, cannot, in itself, be regarded as contrary to the principle of proportionality (see, to that effect, judgment of 21 June 2018, *Poland* v *Parliament and Council*, C-5/16, EU:C:2018:483, paragraph 167).

107 In this regard, as is already clear from paragraphs 32 to 40 of the present judgment, the Parliament and the Council did not fail to take account of the socio-economic costs entailed by the implementation of the contested directive, particularly as regards the Republic of Poland. On the contrary, it was on the

basis of all the information in their possession that those institutions formed the view that the costs of implementing that directive were considerably lower than the resulting socio-economic benefits. Those benefits include, by way of example, lower healthcare costs, improved productivity, less damage to buildings, larger harvests and increased healthy life expectancy.

108 In addition, it is apparent from recitals 9 and 10 of the contested directive that its aim is to enable the achievement, in a cost-effective manner, of the air-quality objectives set out in EU legislation and that it contributes to reducing the health-related costs of air pollution in the European Union by improving the well-being of EU citizens.

109 As indicated in paragraph 34 of the present judgment, the impact assessment describes the respective costs and benefits of five policy options. The chosen option was '6C', which the Council confirms. Annex 7 to the impact assessment shows, in particular, that that option was, in terms of costs and benefits, likely to generate the highest net benefit if implemented. As the Commission points out, option 6C provided for the setting of the overall emission reduction commitment for 2025 at 75% of the gap closure with respect to the WHO guidelines on the impact of fine particulate matter ($PM_{2.5}$) on human health.

110 The Commission also notes that the proposal for a directive included a less ambitious gap closure of 67% over a longer period, namely until 2030, which was considered to be capable of lowering, first, the cost burden by 40% for the two most affected sectors, namely agriculture and refining, and secondly, the overall costs associated with reducing air pollution by 25% compared with the costs set out in the impact assessment.

111 During the negotiations within the Council, the overall level of emission reduction commitments was further reduced, a fact which the Republic of Poland itself acknowledged in its application. As the Commission also confirmed, the proposal for a directive established a general objective for 2030 to reduce premature deaths due to poor air quality in Europe by 52% compared with the number of such deaths recorded in 2005. During negotiations within the Council, that objective was revised down to 49.6%. On that basis, on 23 November 2016, the Parliament adopted its position on the proposal for a directive, which the Council ratified on 8 December 2016.

112 In addition, it is apparent from Chapter 6 of and Annex 8 to the impact assessment that the distribution of effort between Member States is not obviously imbalanced. It is true that, in order to achieve the objectives set by option 6C, an investment amounting to 0.003% of GDP was envisaged for Sweden and an investment amounting to 0.168% of GDP for Bulgaria. However, that divergence reflects both the different levels of GDP within the European Union and the efforts already made in some Member States. The Council rightly points out in this regard that the link between the historical level of emissions and the level of effort required under the contested directive is consistent with the polluter-pays principle.

113 In any event, suffice it to note that the Republic of Poland merely criticises the high costs arising from the national emission reduction commitments without giving consideration to the benefits mentioned in paragraph 107 of the present judgment. Furthermore, it fails to show that those commitments go beyond what is necessary in the light of the objectives of the contested directive and adduces no evidence to suggest that less onerous commitments could have been used to achieve them.

114 The Republic of Poland's criticism of the choice of 2030 as the start date for increasing the emission reduction level must be rejected for the same reasons as those stated in paragraph 113 of the present judgment. In particular, the fact that deferring that date would allow the costs to be spread over time is not sufficient to conclude that the EU legislature's decision clearly entails disproportionate consequences for that Member State. This also applies to the assumption that the price of technology designed to reduce the emissions covered by the contested directive could decrease with the passage of time.

115 Those same considerations apply *mutatis mutandis* to the claim that the obligation to reduce emissions in accordance with a linear trajectory, under Article 4(2) of the contested directive, constitutes an additional, disproportionate burden for the Republic of Poland. The latter does not adduce any evidence to show that the EU legislature erred manifestly in deciding to establish a mechanism for the gradual reduction of emissions from the level determined for 2020 so as to ensure tangible progress towards the level determined for the period after 2030.

116 Moreover, as for the argument that that obligation of gradual reduction places an unreasonable restriction on Member States' scope for manoeuvre, having regard to the legal nature of directives as follows from Article 288 TFEU, it need only be noted that, while the contested directive does indeed lay down binding obligations, it leaves to the Member States the choice of methods to realise those obligations. In any event, the Republic of Poland's fourth plea is concerned with the proportionality of the contested directive, and not with a breach of the first paragraph of Article 296 TFEU relating to legal acts of the European Union.

117 In so far as the Republic of Poland argues that the contested directive imposes a heavier burden on it than on the other Member States, it is, in fact, seeking to establish a breach of the principle of equality of Member States before the Treaties, which should be examined in the context of the fifth plea.

118 In the light of all of the foregoing, the fourth plea in law must be rejected.

The fifth plea in law

Arguments of the parties

119 By its fifth plea, the Republic of Poland claims a breach of the principle of equality of Member States before the Treaties and of the principle of balanced development, arguing that the national emission reduction commitments provided for in the contested directive were determined without taking account of the social and economic situation, technological progress and the costs of implementing those commitments in the different Member States and regions of the European Union.

120 In support of that plea, the Republic of Poland relies on the provisions of Article 4(2) TEU and Article 191 TFEU, relating, respectively, to the equality of Member States before the Treaties and to the balanced development of the regions, and refers, in that regard, to the judgment of 14 July 1998, *Safety Hi-Tech* (C-284/95, EU:C:1998:352, paragraphs 36 and 37). It claims that, by that judgment, the Court held that all of the objectives, principles and criteria laid down in Article 191 TFEU must be accorded the same importance and be taken into account as far as possible. Articles 37 and 51 of the Charter of Fundamental Rights of the European Union ('the Charter') also require observance of the principle of balanced development in the preparation of the European Union's environmental policy.

121 In order to comply with those obligations, the Republic of Poland contends that it is not sufficient to take account of socio-economic data related to a Member State in a selective, incomplete and simplified way. Furthermore, the contested directive does not, in its view, strike a balance between the interests involved, that is, between environmental protection and the economic development of the European Union's different regions. On the contrary, it risks reducing competitiveness, diminishing living standards and exacerbating poverty in Poland, which is at odds with the European Union's cohesion policy.

122 In addition, in Poland, the cost of implementing the national emission reduction commitments will be approximately EUR 543 million per year. That estimate is close to the figure of EUR 557 million per year calculated by IIASA in 2015, corresponding to around a quarter of the total cost of implementing the commitments in the European Union, and is over and above the costs of

implementing Directive 2008/50. Although the Republic of Poland does not dispute the need to reduce the emissions covered by the contested directive, it submits that its implementation imposes a disproportionate burden on it, since the associated cost stands at almost EUR 15 per capita per month in Poland, compared with less than EUR 3 in wealthy Member States, such as the Kingdom of Spain, the French Republic and the United Kingdom of Great Britain and Northern Ireland.

123 According to the Republic of Poland, that disproportionate burden reflects the fact that the methodology used to determine the national emission reduction commitments did not factor in the costs of implementing the contested directive. The historical level of the emissions covered by that directive in Poland cannot justify disproportionate costs which are, in any event, contrary to the principle of sustainable development. The reference to that historical level also fails to have regard to the fact that air quality in that Member State has been improving considerably for many years.

124 Furthermore, it argues, recitals 9 and 13 of the contested directive preclude the imposition of commitments giving rise to disproportionate costs, as confirmed by paragraph 84 of Decision No 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action Programme to 2020 'Living well, within the limits of our planet' (OJ 2013 L 354, p. 171).

125 Moreover, the impact assessment failed to take proper account of the effects of transboundary pollution from non-member countries, especially since the relevant data provided by Ukraine and the Republic of Belarus were incomplete. Transboundary pollution risks undoing the efforts made by the Republic of Poland to comply with its commitments under the contested directive, which leads to unequal treatment of the Member States bordering non-member countries in comparison with the other Member States and is at odds with the polluter-pays principle.

126 The Parliament and the Council contend that the fifth plea must be rejected.

Findings of the Court

127 By its fifth plea, the Republic of Poland essentially submits, in the first place, that the cost of implementing the contested directive is considerably higher in Poland than in other Member States. It claims that this difference is disproportionate and contrary to the principle of equality of Member States before the Treaties, laid down in Article 4(2) TEU, Article 191(3) TFEU and Article 37 of the Charter. Those last two provisions require, inter alia, account to be taken of the balanced and sustainable development of the regions of the European Union.

128 It should be borne in mind in this regard that, under Article 191(2) TFEU, EU policy on the environment is to aim at a 'high level of protection' taking into account the diversity of situations in the various regions of the European Union. Similarly, Article 3(3) TEU provides that the European Union is to work in particular for a 'high level of protection and improvement of the quality of the environment' (judgment of 21 December 2016, *Associazione Italia Nostra Onlus*, C-444/15, EU:C:2016:978, paragraph 42).

129 As for Article 37 of the Charter, this states that a 'high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development'.

130 Article 52(2) of the Charter provides that rights recognised by the Charter for which provision is made in the Treaties are to be exercised under the conditions and within the limits defined by those Treaties. Such is the case with Article 37 of the Charter, which is essentially based on Article 3(3) TEU and Articles 11 and 191 TFEU (judgment of 21 December 2016, *Associazione Italia Nostra Onlus*, C-444/15, EU:C:2016:978, paragraph 62).

131 Consequently, the Republic of Poland's arguments relating to the Charter must be examined in the light of the conditions and limits flowing from Article 191 TFEU.

132 Whilst it is common ground that Article 191(2) TFEU requires EU policy in environmental matters to aim for a high level of protection, such a level of protection, in order to be compatible with that provision, does not necessarily have to be the highest that is technically possible (judgment of 21 December 2016, *Associazione Italia Nostra Onlus*, C-444/15, EU:C:2016:978, paragraph 44).

133 Article 191 TFEU lays down a series of objectives, principles and criteria which the EU legislature must respect in implementing environmental policy (see, to that effect, judgment of 14 July 1998, *Safety Hi-Tech*, C-284/95, EU:C:1998:352, paragraph 36).

134 In particular, it is apparent from Article 191(3) TFEU that, in preparing its policy on the environment, the European Union is required to take account of available scientific and technical data, environmental conditions in the various regions of the European Union, the potential benefits and costs of action or lack of action as well as the economic and social development of the European Union as a whole and the balanced development of its regions.

135 However, in view of the need to strike a balance between certain of those objectives and principles, and in view of the complexity of the implementation of those criteria, review by the Court must necessarily be limited to the question whether the EU legislature committed a manifest error of assessment as regards the conditions for the application of Article 191 TFEU (judgments of 14 July 1998, *Safety Hi-Tech*, C-284/95, EU:C:1998:352, paragraph 37, and of 21 December 2016, *Associazione Italia Nostra Onlus*, C-444/15, EU:C:2016:978, paragraph 46).

136 As is apparent, in particular, from paragraphs 32 to 40 of the present judgment, the EU legislature took into account extensive data when it adopted the contested directive, including information on the cost of implementing the directive in each Member State and the resulting benefits. It also made a choice between several options in order to select the option that was likely to generate the greatest net benefit.

137 Furthermore, as has already been pointed out, particularly in paragraphs 101 and 112 of the present judgment, the EU legislature took proper account of the emission reduction potential in each of the Member States and sought a balanced distribution of efforts between them.

138 In doing so, the EU legislature complied with its obligation under Article 191(3) TFEU. On the basis of the available scientific and technical data, it indeed took account of the balanced development of the European Union and its regions, particularly by factoring in the costs of implementing the contested directive in each Member State and the benefits likely to result from it.

139 That finding is borne out by the case-law referred to in paragraph 106 of the present judgment, according to which the EU legislature's attempt to strike such a balance in the light, not of the particular situation of a single Member State, but of the situation of all Member States, cannot be regarded as contrary to the principle of proportionality.

140 In the second place, the Republic of Poland submits that certain socio-economic sectors and certain areas in Poland, such as agriculture and rural areas, will be particularly affected by the financial obligations arising out of the national emission reduction commitments. In that regard, suffice it to note, as is apparent from paragraph 105 of the present judgment, that neither the allocation of costs related to the performance of those commitments nor the method of financing them was determined by the contested directive, the implementation of which is a matter for the Member States.

141 Moreover, the fact that the Republic of Poland is one of the Member States which, in order to comply with their commitments under the contested directive, will have to make the largest financial investment does not, in itself, mean that that directive imposes a disproportionate burden on that Member State or on the regions within its territory.

142 As regards, in the third place, the argument that transboundary pollution was not taken into account, it need merely be stated that the Republic of Poland has not provided any information to substantiate its criticism. In particular, it does not explain why transboundary pollution might have decisive consequences for the emissions covered by the contested directive produced in Poland and thus for the determination of the commitments to reduce those emissions.

143 Indeed, it follows from Article 1(1) and Article 2(1) of the contested directive that the directive applies to emissions of the pollutants referred to in Annex I 'from all sources occurring in the territory of the Member States' and that it determines the Member States' commitments to reduce those emissions. As stated in recital 14 of that directive, those commitments for 2030 onwards are based on the estimated reduction potential of each Member State and on the political objective of reducing the impact of pollution on health.

144 By its claim that transboundary pollution will negate the efforts which it is required to make under the contested directive, the Republic of Poland also fails to establish a breach of the principle of equal treatment, since it does not provide any details in support of that claim which would make it possible to establish whether, in any event, the claim is well founded.

145 It follows from the foregoing considerations that the EU legislature did not commit a manifest error of assessment concerning the conditions for the application of Article 191 TFEU.

146 For the same reasons, the Republic of Poland's argument that the contested directive infringes the principle of equality of Member States before the Treaties must be rejected.

147 The fifth plea in law must therefore be rejected in its entirety.

148 As none of the pleas put forward by the Republic of Poland in support of its action is well founded, the action must, in consequence, be dismissed in its entirety.

Costs

149 Under Article 138(1) of the Rules of Procedure of the Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the other party's pleadings. Since the Parliament and the Council have applied for costs to be awarded against the Republic of Poland, and since the latter has been unsuccessful, the Republic of Poland must be ordered to bear its own costs and to pay those incurred by those two institutions.

150 In accordance with Article 140(1) of those Rules, Hungary, Romania and the Commission are to bear their own respective costs.

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

1. **Dismisses the action;**

2. **Orders the Republic of Poland to pay the costs incurred by the European Parliament and the Council of the European Union;**

3. **Orders Hungary, Romania and the European Commission to bear their own respective costs.**

[Signatures]