Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

31 March 2022*

(Failure of a Member State to fulfil obligations – Taxation of energy products used by energy-intensive businesses – Directive 2003/96/EC – Article 17(1)(b) and (4) – Businesses covered by the EU Emissions Trading System – Exemption from excise duty)

In Case C-139/20,

ACTION for failure to fulfil obligations under Article 258 TFEU, brought on 16 March 2020,

European Commission, represented initially by M. Siekierzyńska and A. Armenia, and subsequently by A. Armenia, acting as Agents,

applicant,

v

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

defendant,

THE COURT (First Chamber),

composed of L. Bay Larsen, Vice-President of the Court, acting as President of the First Chamber, J.-C. Bonichot (Rapporteur) and M. Safjan, Judges,

Advocate General: G. Hogan,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 30 September 2021,

gives the following

* Language of the case: Polish.

Judgment

1 By its application, the European Commission asks the Court to declare that, by implementing a law which grants a total exemption from excise duty for energy products used by energy-intensive businesses covered by the EU Emissions Trading System, the Republic of Poland has failed to fulfil its obligations under Article 17(1)(b) and (4) of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ 2003 L 283, p. 51).

Legal context

European Union law

Directive 2003/96

2 Recitals 28 and 29 of Directive 2003/96 state:

‘(28) Certain exemptions or reductions in the tax level may prove necessary; notably because of the lack of a stronger harmonisation at Community level, because of the risks of a loss of international competitiveness or because of social or environmental considerations.

(29) Businesses entering into agreements to significantly enhance environmental protection and energy efficiency deserve attention; among these businesses, energy intensive ones merit specific treatment.’

3 Article 4 of that directive provides:

‘1. The levels of taxation which Member States shall apply to the energy products and electricity listed in Article 2 may not be less than the minimum levels of taxation prescribed by this Directive.

2. For the purpose of this Directive “level of taxation” is the total charge levied in respect of all indirect taxes (except [value added tax (VAT)]) calculated directly or indirectly on the quantity of energy products and electricity at the time of release for consumption.’

4 Article 17 of the directive provides:

‘1. Provided the minimum levels of taxation prescribed in this Directive are respected on average for each business, Member States may apply tax reductions on the consumption of energy products used for heating purposes or for the purposes of Article 8(2)(b) and (c) and on electricity in the following cases:

(a) in favour of energy-intensive business.

An “energy-intensive business” shall mean a business entity, as referred to in Article 11, where either the purchases of energy products and electricity amount to at least 3.0% of the production value or the national energy tax payable amounts to at least 0.5% of the added value. Within this definition, Member States may apply more restrictive concepts, including sales value, process and sector definitions.

"Purchases of energy products and electricity" shall mean the actual cost of energy purchased or generated within the business. Only electricity, heat and energy products that are used for heating purposes or for the purposes of Article 8(2)(b) and (c) are included. All taxes are included, except deductible VAT.

"Production value" shall mean turnover, including subsidies directly linked to the price of the product, plus or minus the changes in stocks of finished products, work in progress and goods and services purchased for resale, minus the purchases of goods and services for resale.

"Value added" shall mean the total turnover liable to VAT including export sales minus the total purchases liable to VAT including imports.

Member States, which currently apply national energy tax systems in which energy-intensive businesses are defined according to criteria other than energy costs in comparison with production value and national energy tax payable in comparison with value added, shall be allowed a transitional period until no later than 1 January 2007 to adapt to the definition set out in point (a) first subparagraph;

(b) where agreements are concluded with undertakings or associations of undertakings, or where tradable permit schemes or equivalent arrangements are implemented, as far as they lead to the achievement of environmental protection objectives or to improvements in energy efficiency.

2. Notwithstanding Article 4(1), Member States may apply a level of taxation down to zero to energy products and electricity as defined in Article 2, when used by energy-intensive businesses as defined in paragraph 1 of this Article.

3. Notwithstanding Article 4(1), Member States may apply a level of taxation down to 50% of the minimum levels in this Directive to energy products and electricity as defined in Article 2, when used by business entities as defined in Article 11, which are not energy-intensive as defined in paragraph 1 of this Article.

4. Businesses that benefit from the possibilities referred to in paragraphs 2 and 3 shall enter into the agreements, tradable permit schemes or equivalent arrangements as referred to in paragraph 1(b). The agreements, tradable permit schemes or equivalent arrangements must lead to the achievement of environmental objectives or increased energy efficiency, broadly equivalent to what would have been achieved if the standard Community minimum rates had been observed.'

5 Annex I to Directive 2003/96 sets out the minimum levels of taxation applicable to motor fuels, heating fuels and electricity.

Directive 2003/87/EC

6 Article 10b of Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32), as amended by Directive

(EU) 2018/410 of the European Parliament and of the Council of 14 March 2018 (OJ 2018 L 76, p. 3) ('Directive 2003/87'), entitled 'Transitional measures to support certain energy intensive industries in the event of carbon leakage', provides:

'1. Sectors and subsectors in relation to which the product resulting from multiplying their intensity of trade with third countries, defined as the ratio between the total value of exports to third countries plus the value of imports from third countries and the total market size for the European Economic Area (annual turnover plus total imports from third countries), by their emission intensity, measured in $kgCO_2$, divided by their gross value added (in euros), exceeds 0.2, shall be deemed to be at risk of carbon leakage. Such sectors and subsectors shall be allocated allowances free of charge for the period until 2030 at 100% of the quantity determined pursuant to Article 10a.

2. Sectors and subsectors in relation to which the product resulting from multiplying their intensity of trade with third countries by their emission intensity exceeds 0.15 may be included in the group referred to in paragraph 1, using data for the years from 2014 to 2016, on the basis of a qualitative assessment and of the following criteria:

(a) the extent to which it is possible for individual installations in the sector or subsector concerned to reduce emission levels or electricity consumption;

(b) current and projected market characteristics, including, where relevant, any common reference price;

(c) profit margins as a potential indicator of long-run investment or relocation decisions, taking into account changes in costs of production relating to emission reductions.

3. Sectors and subsectors that do not exceed the threshold referred to in paragraph 1, but have an emission intensity measured in $kgCO_2$, divided by their gross value added (in euros), which exceeds 1.5, shall also be assessed at a 4-digit level (NACE-4 code). The Commission shall make the results of that assessment public.

Within three months of the publication referred to in the first subparagraph, the sectors and subsectors referred to in that subparagraph may apply to the Commission for either a qualitative assessment of their carbon leakage exposure at a 4-digit level (NACE-4 code) or an assessment on the basis of the classification of goods used for statistics on industrial production in the Union at an 8-digit level (Prodcom). To that end, sectors and subsectors shall submit duly substantiated, complete and independently verified data to enable the Commission to carry out the assessment together with the application.

Where a sector or subsector chooses to be assessed at a 4-digit level (NACE-4 code), it may be included in the group referred to in paragraph 1 on the basis of the criteria referred to in points (a), (b) and (c) of paragraph 2. Where a sector or subsector chooses to be assessed at an 8-digit level (Prodcom), it shall be included in the group referred to in paragraph 1 provided that, at that level, the threshold of 0.2 referred to in paragraph 1 is exceeded.

Sectors and subsectors for which free allocation is calculated on the basis of the benchmark values referred to in the fourth subparagraph of Article 10a(2) may also request to be assessed in accordance with the third subparagraph of this paragraph.

By way of derogation from paragraphs 1 and 2, a Member State may request, by 30 June 2018, that a sector or subsector listed in the Annex to [Commission Decision 2014/746/EU of 27 October 2014 determining, pursuant to Directive 2003/87/EC of the European Parliament and of the Council, a list of sectors and subsectors which are deemed to be exposed to a significant risk of carbon leakage, for the period 2015 to 2019 (OJ 2014 L 308, p. 114)] in respect of classifications at a 6-digit or an 8-digit level (Prodcom) be considered to be included in the group referred to in paragraph 1. Any such request shall only be considered where the requesting Member State establishes that the application of that derogation is justified on the basis of duly substantiated, complete, verified and audited data for the five most recent years provided by the sector or subsector concerned, and includes all relevant information with its request. On the basis of those data, the sector or subsector concerned shall be included in respect of those classifications where, within a heterogeneous 4-digit level (NACE-4 code), it is shown that it has a substantially higher trade and emission intensity at a 6-digit or an 8-digit level (Prodcom), exceeding the threshold set out in paragraph 1.

4. Other sectors and subsectors are considered to be able to pass on more of the costs of allowances in product prices, and shall be allocated allowances free of charge at 30% of the quantity determined pursuant to Article 10a. Unless otherwise decided in the review pursuant to Article 30, free allocations to other sectors and subsectors, except district heating, shall decrease by equal amounts after 2026 so as to reach a level of no free allocation in 2030.

5. The Commission is empowered to adopt, by 31 December 2019, delegated acts in accordance with Article 23 to supplement this Directive concerning the determination of sectors and subsectors deemed at risk of carbon leakage, as referred to in paragraphs 1, 2 and 3 of this Article, for activities at a 4-digit level (NACE-4 code) as far as paragraph 1 of this Article is concerned, based on data for the three most recent calendar years available.'

Polish law

7 Article 31a of the Ustawa o podatku akcyzowym (Law on excise duty) of 6 December 2008 (Dz. U. of 2014, item 752), in the version applicable to these proceedings ('the Law on excise duty'), provides, in paragraph 1, point 8:

'Taxable transactions which are subject to excise duty shall be exempt from excise duty if they relate to carbon products for heating purposes:

…

(8) by an energy-intensive business using carbon products in which a system has been put in place to achieve environmental protection objectives or an increase in energy efficiency'.

8 Article 31b of the Law on excise duty provides, in paragraph 1, point 5:

'Taxable transactions which are subject to excise duty shall be exempt from excise duty if they relate to gas products for heating purposes:

…

(5) by an energy-intensive business using gas products in which a system has been put in place to achieve environmental protection objectives or an increase in energy efficiency.'

9 Article 31c of the Law on excise duty is worded as follows:

The following shall be considered a scheme for achieving environmental protection objectives or an increase in energy efficiency referred to in point (8) of Article 31a(1) and point (5) of Article 31b(1):

(1) the EU Emissions Trading System in accordance with the ustawa o systemie handlu uprawnieniami do emisji gazów cieplarnianych [(Law on the system for greenhouse gas emission allowance trading) of 12 June 2015 (Dz. U. of 2015, item 1223, and of 2016, items 266, 542, 1579 and 1948)] and the provisions adopted on the basis of Articles 25(4) and 29(1) of that law;

…'.

Pre-litigation procedure

10 On 3 February 2016, the Commission drew the attention of the Republic of Poland to the potential non-compliance of the Law on excise duty with Article 17(1)(b) and (4) of Directive 2003/96 to the extent that the national law grants an exemption from excise duty for energy products (carbon and gas products) used by energy-intensive businesses covered by the EU Emissions Trading System provided for in Directive 2003/87. The Commission considered that the mere fact that those businesses were covered by that system did not mean they could automatically benefit from a tax exemption under Article 17 of Directive 2003/96 but that they also had to put in place systems leading to the achievement of environmental objectives or increased energy efficiency over and above those achieved by the trading system.

11 In its response of 31 March 2016, the Republic of Poland argued that that system should be regarded as leading to the achievement of environmental objectives or increased energy efficiency and that, for energy-intensive businesses, the mere fact of being covered by that system was sufficient to receive a tax exemption under Article 17 of Directive 2003/96.

12 On 8 March 2018, the Commission sent a letter of formal notice to the Republic of Poland complaining that, by granting a total exemption from excise duty to the energy products used by energy-intensive businesses covered by the EU Emissions Trading System, the Republic of Poland had failed in its obligations under Article 17(1)(b) and (4) of Directive 2003/96.

13 By letter of 8 May 2018, the Republic of Poland rejected the Commission's position in its entirety, on the ground, inter alia, that the EU Emissions Trading System constitutes a 'tradable permit scheme' within the meaning of Article 17(1)(b) and (4) of Directive 2003/96.

14 On 26 July 2019, the Commission sent a reasoned opinion to the Republic of Poland in which it stated that that Member State had failed to fulfil its obligations under those provisions.

15 In its reply of 19 September 2019, the Republic of Poland maintained its position.

16 As it was not satisfied by the responses provided by the Republic of Poland, the Commission decided to bring the present action before the Court.

The action

Arguments of the parties

17 In support of its action, the Commission relies on a single complaint, arguing that, by exempting from excise duty the energy products used by energy-intensive businesses on the ground that those businesses are covered by the EU Emissions Trading System, the Republic of Poland has failed to fulfil its obligations under Article 17(1)(b) and (4) of Directive 2003/96.

18 The Commission considers that, in order to benefit from that exemption, energy-intensive businesses must put in place the agreements, tradable permit schemes or equivalent arrangements referred to in those provisions.

19 According to the Commission, the EU Emissions Trading System does not constitute a 'tradable permit scheme' within the meaning of those provisions.

20 The Commission does acknowledge that the EU Emissions Trading System is a tradable permit scheme, the objective of which is to promote a reduction in greenhouse gas emissions and, therefore, environmental protection.

21 However, it considers that the mere fact that a given operator is covered by that mandatory trading scheme does not allow a Member State to grant it an exemption or reduction of excise duty on the basis of Article 17(2) of Directive 2003/96.

22 It is apparent from a statement by the Council of the European Union, annexed to the minutes of the Council meeting at which Directive 2003/96 was adopted, that the Council undertook 'to positively examine tax measures which will accompany the future implementation of a Community emission trading scheme, particularly in order to avoid cases of double taxation'. According to the Commission, that means that the intention of the EU legislature was indeed that the taxation regime set up by Directive 2003/96 and the application of the EU Emissions Trading System should coexist. That statement cannot, therefore, be interpreted as authorising Member States to exempt energy products used by businesses covered by the EU Emissions Trading System from excise duty.

23 In addition, recitals 28 and 29 of Directive 2003/96 confirm that the legislature intended the tax advantages provided for in Article 17 of the directive to help to improve environmental protection or energy efficiency. Such objectives would not be achieved if a tax exemption was granted under that provision simply because a given operator was covered by another mandatory instrument of EU law, such as the emissions trading scheme. Therefore, according to the Commission, the concept of 'tradable permit schemes' within the meaning of Article 17(1)(b) and (4) of Directive 2003/96 covers only schemes leading to the achievement of environmental objectives or increased energy efficiency exceeding the results of the implementation of other mandatory schemes established by EU acts. The environmental protection and increased energy efficiency objectives referred to in those provisions must, therefore, consist of objectives going beyond what is envisaged by binding instruments of EU law, such as the emissions trading scheme.

24 The Commission also submits that there is no contradiction between the current wording of Article 17 of Directive 2003/96 and the text of the proposal of 13 April 2011 for a Council directive amending Directive 2003/96 (COM (2011)169). That proposal introduced a distinction between general energy consumption taxation and a new form of taxation specifically related to CO_2. Thus, whereas Article 14(1)(d) of that proposal contained an exemption from CO_2-related taxation for activities subject to the EU Emissions Trading System, there was no exemption from general energy consumption taxation envisaged in the same situation. It is because of the proposed distinction in the treatment of CO_2-related taxation and general energy consumption taxation, as expressly set out by the Commission in recital 22 and in Article 17(2) of that proposal, that the EU Emissions Trading System was not covered by the concept of 'tradable permit schemes' within the meaning of Article 17(1)(b) and (4). Conversely, as the EU legislature did not adopt that proposed distinction in Directive 2003/96, it was not necessary to include the same clarification. According to the Commission, if the EU legislature had intended to include the EU Emissions Trading System within the concept of 'tradable permit schemes', within the meaning of Article 17(1)(b) and (4) of Directive 2003/96, it would have done so explicitly at the time the directive was adopted.

25 Furthermore, the Commission considers that the Republic of Poland's argument alleging that the taxation under Directive 2003/96 of businesses covered by the EU Emissions Trading System is an infringement of the 'polluter pays' principle set out in Article 191(2) TFEU cannot succeed.

26 In addition, according to the Commission, the fact that the Republic of Poland has introduced tax advantages into its legislation for energy-intensive businesses producing CO_2 on the sole ground that they participate in the EU Emissions Trading System could lead to a distortion of competition in the internal market. Directive 2003/87 already contains specific instruments to combat distortions of competition, such as the allocation of CO_2 emission allowances free of charge or the compensation of indirect emissions costs.

27 In its written replies to the questions posed by the Court, the Commission points out that the exemption under the Law on excise duty is granted even if the businesses concerned have already benefited from the allocation of free CO_2 emission allowances under Directive 2003/87. In that way, according to the Commission, the advantages resulting from the exemption from excise duty automatically cumulate with the allocation of free CO_2 emission allowances under Article 10b of that directive.

28 The Commission also states that the Republic of Poland had notified a State aid scheme for the years 2019 and 2020, under which certain businesses could apply for the compensation of a share of their indirect emission costs. The Commission considered that scheme to be compatible with the internal market on condition that the aid in question was not cumulated with a tax exemption under the Law on excise duty. The Commission specifies that very few undertakings took advantage of that State aid scheme. It surmises that the tax advantages granted under that national law, which are granted automatically for coal and gas used by businesses for heating purposes as long as an energy-intensive undertaking is covered by the emissions trading scheme, are more attractive for businesses than the scheme for compensation of indirect emission costs.

29 Lastly, according to the Commission, the exemption of energy-intensive businesses covered by the EU Emissions Trading System from excise duties undermines the environmental initiatives under that system, since the cost to the businesses of participating in that mandatory scheme could be compensated for by the exemption in question.

30 The Republic of Poland does not dispute that the Law on excise duty provides for a total exemption from excise duty for energy products, more particularly coal and gas products, used by businesses, conditional only on those businesses being subject to the EU Emissions Trading System.

31 In its written replies to the questions posed by the Court, the Republic of Poland confirmed that, pursuant to the Law on excise duty, a total exemption from excise duty is automatically applied to energy-intensive businesses simply because they fall under the EU Emissions Trading System. It also confirmed that that exemption applies irrespective of whether the energy-intensive businesses benefiting from it have already received or are also receiving CO_2 emission allowances free of charge under Directive 2003/87.

32 Nonetheless, it considers that the EU Emissions Trading System constitutes a 'tradable permit scheme' within the meaning of Article 17(1)(b) and (4) of Directive 2003/96.

33 According to the Republic of Poland, first, the EU Emissions Trading System is a scheme of tradable permits which take the form of allowances which may be transferred or acquired. Secondly, such a system enables environmental objectives to be achieved, in particular by promoting a substantial reduction of greenhouse gas emissions in a cost-effective and economically efficient manner, in order to be able to fulfil the commitments of the European Union and its Member States under the Kyoto Protocol, as was recalled by the Court in the judgment of 29 March 2012, *Commission* v *Poland* (C-504/09 P, EU:C:2012:178).

34 Unlike the Commission, the Republic of Poland considers that, in order to qualify as a 'tradable permit scheme' within the meaning of Article 17(1)(b) and (4) of Directive 2003/96, the scheme in question need not lead to the achievement of environmental objectives or improvements in energy efficiency exceeding those resulting from the implementation of other mandatory schemes set up under EU acts. According to the Republic of Poland, there is no such requirement under Directive 2003/96.

35 In addition, according to the Republic of Poland, given that Directive 2003/96 was elaborated almost simultaneously with Directive 2003/87, if the EU legislature had wished to exclude the emissions allowance trading system from the concept of 'tradable permit scheme' as appears in Article 17(1)(b) and (4) Directive 2003/96, it would have expressly mentioned it in the directive.

36 With regard to the statement by the Council referred to in paragraph 22 of the present judgment, the Republic of Poland considers that this simply means that the Council undertook to analyse the tax measures which were to accompany the future implementation of the EU Emissions Trading System, in order to avoid cases of double taxation. That statement did not in any way refer to the way in which Article 17 of Directive 2003/96 was to be applied. Furthermore, according to the Republic of Poland, the Commission's logic in not granting the tax advantages provided for in Article 17 of Directive 2003/96 to energy-intensive businesses which have implemented the mandatory EU Emissions Trading System would lead to a double burden on those businesses.

37 The Republic of Poland also disputes the Commission's argument based on recital 22 of its proposal for a directive, referred to in paragraph 24 of the present judgment. According to the Republic of Poland, it cannot be deduced from that recital that, in the period prior to that proposal, the tradable permit schemes referred to in Article 17 of Directive 2003/96 did not include the EU Emissions Trading System. As for the period after the aforementioned proposal

for a directive, since the proposal was not approved, Article 17 of Directive 2003/96 clearly still allows Member States to apply the exemption to energy-intensive businesses covered by that system.

Findings of the Court

38 The Commission's action is based on the single complaint alleging that the Republic of Poland infringed Article 17(1)(b) and (4) of Directive 2003/96 on the ground that the concept of 'tradable permit schemes', within the meaning of those provisions, covers only 'voluntary' schemes leading to the achievement of environmental objectives or increased energy efficiency 'exceeding the results of the implementation of other mandatory schemes established by EU acts', such as the EU greenhouse gas emission allowance trading system, as provided for in Directive 2003/87.

39 It must be recalled that, pursuant to Article 4 of Directive 2003/96, Member States must tax the energy products falling within the scope of that directive, namely, motor fuels, heating fuels and electricity, applying levels of taxation which may not be less than the minimum levels of taxation prescribed by the directive.

40 However, Article 17(1) of that directive allows Member States to apply tax reductions on the consumption of energy products used inter alia for heating purposes, provided the minimum levels of EU taxation prescribed by that directive are respected on average for each business.

41 Point (b) of that provision specifies that those reductions can be applied where agreements are concluded with undertakings or associations of undertakings, or where tradable permit schemes or equivalent arrangements are implemented, as far as they lead to the achievement of environmental protection objectives or to improvements in energy efficiency.

42 Article 17(2) of Directive 2003/96 allows Member States to apply a level of taxation down to zero to energy products and electricity within the scope of the directive, when used by energy-intensive businesses.

43 However, in order to benefit from such an exemption, energy-intensive businesses must satisfy the conditions set out in Article 17(4) of that directive.

44 In that regard, the latter provision requires those businesses to enter into the agreements, tradable permit schemes or equivalent arrangements referred to in Article 17(1)(b) of that directive and specifies that those agreements, tradable permit schemes or equivalent arrangements must lead to the achievement of environmental objectives or increased energy efficiency, broadly equivalent to what would have been achieved if the standard EU minimum rates had been observed.

45 In support of its claim that the system for greenhouse gas emission allowance trading within the European Union, within the meaning of Directive 2003/87, cannot be considered to be a 'tradable permit scheme' within the meaning of Article 17(1)(b) and (4) of Directive 2003/96, the Commission maintains that such a scheme entails a voluntary commitment on the part of the businesses concerned. That is not the case for businesses which participate in the system for greenhouse gas emission allowance trading within the European Union, given the mandatory nature of that system.

46 In that regard, it must be noted from the outset that Directive 2003/96 does not expressly exclude the system for greenhouse gas emission allowance trading within the European Union, within the meaning of Directive 2003/87, from the concept of 'tradable permit schemes'.

47 Furthermore, as the Advocate General pointed out in point 56 of his Opinion, the wording of Article 17(4) of Directive 2003/96 refers to agreements, tradable permit schemes or equivalent arrangements as referred to in Article 17(1)(b) of that directive. Under the terms of the latter provision, a distinction must be drawn between agreements 'concluded' with undertakings or associations of undertakings, on the one hand, and, inter alia, tradable permit schemes which are 'implemented', on the other.

48 It follows that those provisions cannot be read as excluding from their scope the participation of businesses in a mandatory scheme such as the system for greenhouse gas emission allowance trading within the European Union.

49 Therefore, as regards the Commission's contention that the concept of 'tradable permit schemes' referred to in Article 17(1)(b) and (4) of Directive 2003/96 must be interpreted as referring only to schemes that lead to the achievement of environmental objectives or improvements in energy efficiency above and beyond those resulting from the implementation of other mandatory schemes, it must be found that such a reading of those provisions is not supported by the wording thereof.

50 Furthermore, as the Advocate General pointed out in point 51 of his Opinion, contrary to the Commission's assertions concerning the statement by the Council referred to in paragraph 22 of the present judgment, the content of such a statement, which is not a legislative text, cannot change the clear wording of a provision of EU law.

51 It should also be recalled that the Court has already found that the ultimate objective of the allowance trading scheme is the protection of the environment by means of a reduction of greenhouse gas emissions (see, to that effect, inter alia, judgments of 16 December 2008, *Arcelor Atlantique et Lorraine and Others*, C-127/07, EU:C:2008:728, paragraph 31, and of 29 March 2012, *Commission* v *Poland*, C-504/09 P, EU:C:2012:178, paragraph 77).

52 It is, however, apparent from Article 17(4) of Directive 2003/96 that, in order to benefit from a total exemption from excise duty under Article 17(2) of that directive, the environmental incentives that result from entering into agreements, tradable permit schemes or equivalent arrangements must be broadly equivalent to what would have been achieved if the minimum rates of taxation set out in Annex I to that directive had been applied.

53 Accordingly, pursuant to Article 17(4) of Directive 2003/96, energy-intensive businesses covered by the EU Emissions Trading System cannot, on that sole fact alone, automatically benefit from a total exemption from excise duty under Article 17(2) of that directive unless it is established that the condition referred to in the paragraph above is satisfied.

54 However, as the Advocate General noted in point 58 of his Opinion, the Commission did not claim in its application that Polish law had failed to comply with that condition.

55 It follows from Article 120(c) of the Rules of Procedure of the Court and the case-law relating to that provision that an application must state the subject matter of the proceedings and a summary of the pleas in law on which the application is based, and that that statement must be sufficiently

clear and precise to enable the defendant to prepare its defence and the Court to rule on the application (judgment of 16 September 2015, *Commission* v *Slovakia*, C-361/13, EU:C:2015:601, paragraph 21).

56 It is therefore necessary for the essential points of law and of fact on which a case is based to be indicated coherently and intelligibly in the application itself and for the heads of claim to be set out unambiguously so that, inter alia, the Court does not rule *ultra petita* (see, to that effect, judgment of 28 October 2010, *Commission* v *Malta*, C-508/08, EU:C:2010:643, paragraph 16).

57 In those circumstances, the Commission's single complaint must be rejected as unfounded and the action accordingly dismissed in its entirety, without there being any need to rule on the question of whether Polish law complies with the condition set out in paragraph 52 of the present judgment.

Costs

58 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 successful party's pleadings. Since the Republic of Poland has applied for costs and the Commission has been unsuccessful, the Commission must be ordered to pay the costs.

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

1. Dismisses the action;

2. Orders the European Commission to pay the costs.

[Signatures]