

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

(Case C-505/23)

(2023/C 338/18)

Language of the case: Polish

Parties

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

Defendant: European Parliament and Council of the European Union

Form of order sought

- The applicant claims that the Court should: annul in its entirety Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union and Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading system ⁽¹⁾

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

Pleas in law and main arguments

1. Infringement of Article 192(2)(c) TFEU on account of having adopted the entirety of the directive on an incorrect legal basis (Article 192(1) TFEU)

In Poland's view, the defendant institutions infringed Article 192(2)(c) TFEU on account of failing to adopt the contested directive on the basis of the abovementioned provision, which requires unanimity within the Council, whereas that directive significantly affects the choice of a Member State between different energy sources and the general structure of its energy supply.

2. Infringement of Article 192(2)(a) TFEU on account of having adopted the ETS laid down in Directive 2023/959 on an incorrect legal basis (Article 192(1) TFEU) where that system entails provisions primarily of a fiscal nature

In Poland's view, the defendant institutions infringed Article 192(2) TFEU in so far as they adopted the provisions of the directive relating to the ETS for buildings and road transport on the basis of Article 192(1) TFEU, whereas that system contains provisions primarily of a fiscal nature, and its adoption should have been based on Article 192(2)(a) TFEU which requires unanimity in the Council.

3. Infringement of the principle of energy solidarity referred to in Article 194(1)(b) TFEU by extending the subject matter of the amendment of Directive 2003/87 and of its scope despite not taking into consideration the interests of the Member States (including Poland) and the weighing of those interests against the interests of the European Union

In Poland's view, the defendant institutions infringed Article 194(1)(b) TFEU by adopting Directive 2003/87 without taking into consideration the interests of the Member States (including Poland) and the weighing of those interests against the interests of the European Union.

4. Infringement of the principle of subsidiarity referred to in Article 5(3) TEU by adopting the ETS for buildings and road transport while there already exists in the European Union an equivalent system that allows Member States to achieve the objectives referred to in that directive at regional and local level to a greater degree than guaranteed in Directive 2023/959

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

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

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

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

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

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

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

(¹) OJ 2023 L 130, p. 134.

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

(Case C-512/23)

(2023/C 338/19)

Language of the case: Polish

Parties

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

Defendant: European Parliament, Council of the European Union

Form of order sought

The applicant claims that the Court should:

- annul in its entirety Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism (¹)
- order the European Parliament and the Council of the European Union to pay the costs.

Pleas in law and main arguments

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