



Press and Information

Court of Justice of the European Union  
**PRESS RELEASE No 171/14**  
Luxembourg, 11 December 2014

Advocate General's Opinion in Case C-320/13  
Commission v Poland

## **According to Advocate General Wathelet, Poland has failed to fulfil its obligation to transpose the Renewable Energy Directive**

*Since it persisted in failing to fulfil its obligations at the time of the examination of the facts, Poland should be ordered to pay a daily penalty payment of €61 380 effective from the date of the delivery of the Court's judgment*

The Treaty of Lisbon, which entered into force on 1 December 2009, allows the Court of Justice to impose, at the stage of the first judgment in respect of a failure to fulfil obligations, financial penalties in cases of failure to notify to the Commission national measures transposing a directive.<sup>1</sup>

In 2009, the Parliament and the Council adopted three directives in the framework of the 'energy-climate package'.<sup>2</sup> The aim of the package was to establish a legal framework enabling the EU to achieve by 2020 a 20% reduction in greenhouse gas emissions from 1990 levels, a raise in the share of energy produced from renewable sources in gross final energy consumption to 20%, and an improvement of energy efficiency within the EU by 20%.

In the framework of that package, the Renewable Energy Directive (Directive 2009/28) sets, in particular, mandatory national targets for the overall share of energy from renewable sources in gross final consumption of energy and in transport. It requires the Member States to ensure that a number of guarantees, pieces of information and incentives are provided in various administrative procedures, regulations and codes. In addition, the directive lays down a number of obligations to ensure access to, and the dissemination of, various items of information on renewable energy and its use. It defines the sustainability criteria which biofuels and bioliquids must meet in order, first, to be taken into account in the assessment of compliance with the requirements laid down by the directive and, secondly, for determining eligibility for financial aid. Moreover, it establishes the principles governing the verification of compliance with those sustainability criteria. Lastly, it provides that the national transposition measures must enter into force and be communicated to the Commission by 5 December 2010 at the latest.

Taking the view that the measures communicated by Poland did not constitute transposition of the directive, the Commission brought an action before the Court. It criticises Poland, on the one hand, for having failed to adopt the measures necessary to comply with Directive 2009/28 and, on the other hand, for having failed in any event to notify it of any relevant instruments. The Commission seeks an order from the Court imposing upon Poland a penalty payment of €61 380 per day of delay as from the day on which judgment is delivered in this case.

<sup>1</sup> Article 260(3) TFEU.

<sup>2</sup> Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ 2009 L 140, p. 16); Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community (OJ 2009 L 140, p. 63); Directive 2009/30/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 98/70/EC as regards the specification of petrol, diesel and gas-oil and introducing a mechanism to monitor and reduce greenhouse gas emissions and amending Council Directive 1999/32/EC as regards the specification of fuel used by inland waterway vessels and repealing Directive 93/12/EEC (OJ 2009 L 140, p. 88).

In today's Opinion, **Advocate General Melchior Wathelet proposes that the Court find that Poland has infringed EU law.**

The Advocate General recalls first of all that, while it is for the Commission to prove the allegation that an obligation has not been fulfilled, it is for the Member States to facilitate the achievement of that task, in particular, by providing the Commission with clear and precise information. The Member States must therefore indicate unequivocally the laws, regulations and administrative provisions by means of which they consider to have satisfied the various obligations imposed on them by the directive. Non-compliance with that obligation by a Member State, whether by providing no information at all or by providing insufficiently clear and precise information, may of itself justify the opening of the infringement proceedings.

Next, the Advocate General finds that, at the end of the period laid down in the reasoned opinion sent by the Commission to Poland, Poland had not yet adopted all the measures necessary to transpose the directive or notified the relevant instruments. He emphasises in this regard that in claiming that the Law adopted in July 2013 (in other words at a date much later than the end of the period laid down in the reasoned opinion) was 'the fundamental measure transposing the directive, Poland implicitly conceded that the pre-existing national legislation did not constitute full transposition of the directive.

Moreover, the Advocate General considers that, at the time of the Court's examination of the facts, Poland had still not transposed into national law some of the provisions of Directive 2009/28 or notified the Commission of adequate transposition measures. With regard to the order imposing a penalty payment sought by the Commission, the Advocate General observes that a penalty payment is, in itself, an appropriate financial means of encouraging a Member State to take the measures necessary to put an end to an established infringement and to ensure full transposition of a directive. In his view, contrary to what Poland argues, the possibility of imposing a financial penalty on a Member State at the stage of the first action for failure to fulfil obligations applies when there has been a failure to notify measures transposing a directive adopted under a legislative procedure or even a directive, such as that at issue in this case, which was adopted under a similar procedure prior to the entry into force of the Treaty of Lisbon (co-decision) and whose period for transposition expired after that date. Furthermore, the Commission does not have to give specific reasons for its decision to avail itself of the possibility of seeking an order imposing a penalty payment or a lump sum on a Member State which has not notified the measure transposing a directive or has notified only measures constituting an incomplete or incorrect transposition of a directive. As the Court has already held, it is essential that the provisions of directives be implemented with unquestionable binding force, and with the specificity, precision and clarity necessary to satisfy the requirements of legal certainty.

Considering the seriousness of the failure to fulfil obligations, its duration, the uniform flat-rate proposed by the Commission, as well as the ability to pay, **the Advocate General proposes that the Court impose on Poland a daily penalty payment of €61 380 per day of delay until such time as the latter notifies to the Commission the measures transposing the directive**. He also proposes that the payment obligation take effect from the date of the Court's judgment, on condition that the failure to fulfil obligations continues at the date of its delivery.

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**NOTE:** An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under EU law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are

responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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*Unofficial document for media use, not binding on the Court of Justice.*

The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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