COURT OF JUSTICE
OF THE EUROPEAN UNION

Judgments of the Court

In Cases C-442/23 | *Poland* v *Parliament and Council (Objectives of the LULUCF sector)*, C-444/23 | *Poland* v *Parliament and Council* (Strengthening of performance standards for vehicles), C-445/23 | *Poland* v *Parliament and Council (Extension of the market stability reserve)*, C-451/23 | *Poland* v *Parliament and Council (Objectives fixed for sectors covered by the ESR Regulation)*, C-505/23 | *Poland* v *Parliament and Council (Emission allowances in building and road transport)*, C-512/23 | *Poland* v *Parliament and Council (Carbon Border Adjustment Mechanism)* and C-771/23 | *Poland* v *Parliament and Council* (Energy efficiency)

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Greenhouse gas emissions: the Court dismisses seven actions brought by Poland against various measures of the ‘Fit for 55’ legislative package

In order to reduce greenhouse gas emissions in the European Union by at least 55% compared to 1990 levels by 2030 and achieve climate neutrality by 2050, the Union adopted a bundle of legislative measures in the ‘Fit for 55’ legislative package.

Poland brought a number of actions before the Court seeking to have the following seven legislative acts of that package annulled:

1. the regulation on binding net greenhouse gas removal targets for the Member States for 2030 in the land use, land use change and forestry sector [1] (‘the LULUCF sector’); [2]

2. the regulation strengthening the CO_2 emission performance standards applicable to new passenger cars and new light commercial vehicles, [3] providing inter alia for an EU fleet-wide 100% reduction of those emissions as from 2035; [4]

3. the decision extending the doubling of the minimum number of allowances to be placed in the market stability reserve for the Union greenhouse gas emission trading system until 2030; [5] [6]

4. the regulation strengthening binding greenhouse gas emission reduction targets imposed on the Member States in certain sectors, [7] including road transport, building, agriculture and waste; [8]

5. the directive amending the system for greenhouse gas emission allowance trading within the Union, [9] in particular by extending it to maritime transport and introducing a separate system for fuel consumption emissions in the building and road transport sectors; [10]

6. the regulation establishing a Carbon Border Adjustment Mechanism, [11] intended to make certain goods imported into the Union from third countries subject to carbon pricing; [12]

7. the directive on energy efficiency, [13] which lays down *inter alia* a common Union-wide energy consumption reduction target by 2030 and imposes energy efficiency obligations on the Member States. [14]

Poland took the view, *inter alia*, that the contested acts were essentially fiscal in nature or affected the general structure of its energy supply, with the result that they should have been adopted on the basis of points (a) and (c) of the first subparagraph of Article 192(2) TFEU, which requires a unanimous vote by the Council of the European Union.

In its judgments delivered today, **the Court dismisses all of the actions brought by Poland**.

In the first place, the Court notes that the legal basis for each of the contested measures must rest on objective factors which are amenable to judicial review, such as the aim and content of the measure in question. It adds in that regard that those factors do not include the likely effects of that measure, since such an assessment, by its nature, is speculative, and only an ex post analysis would make it possible to ascertain the real and specific effects of that measure.

The context of which the measure forms part must also be taken into account in order to determine the appropriate legal basis, since that context is capable of shedding light on the aim pursued by the EU legislature, especially where a measure amends existing measures, as is the case of almost all of the contested measures. In such a situation, account must be taken of the aim and content of the measures. However, since the legal basis of a measure must be determined on its own, the legal basis used for the adoption of a similar measure is not necessarily relevant.

In those circumstances, the Court holds that none of the seven measures contested has as its primary purpose significantly to affect a Member State's choice between different energy sources and the general structure of the energy supply of that Member State. **Six of the measures relate to the European Union's environmental policy**, since they are intended primarily to tackle climate- and environmental-related challenges faced by the Union and to attain the objectives of the Paris Agreement. [15] As regards **the directive on energy efficiency**, it had to be adopted on the basis of Article 194(2) TFEU, as its provisions are directed primarily at improving energy efficiency in the Union, which **comes within the European Union's environmental policy**.

Those seven measures could accordingly be adopted under the ordinary legislative procedure, [16] in which the European Parliament and the Council decide together, the latter by qualified majority.

In that context, the Court emphasises that **exceptions to the ordinary legislative procedure must be interpreted strictly**. The fact that an environmental measure may produce indirect or incidental effects in fields other than that in which it pursues its primary purpose does not justify recourse to such an exception.

In the second place, the Court states that **the principle of energy solidarity**, [17] relied on by Poland, is applicable only to EU measures in the field of energy. It may not, therefore, be successfully relied on to challenge measures which, like almost all of the measures at issue in the present cases, come within the European Union's environmental policy.

That principle is a specific expression of the **general principle of solidarity**, which is one of the fundamental principles of EU law. It entails mutual obligations of solidarity between the European Union and the Member States, and the Member States inter se. It also requires the EU institutions to weigh up the interests of the various Member States and those of the Union as a whole, **although it cannot be ruled out that an EU measure may have negative impacts for certain Member States**. In that regard, the Court notes that the EU legislature took account of the Member States' interests, inter alia by providing for **specific compensatory measures**, in particular under the Social Climate Fund.

In the third place, the Court does not uphold Poland's arguments to the effect that certain of the contested measures undermine the well-being of peoples of the Union, in particular due to their economic and social consequences, such as higher energy prices and loss of employment. It notes that Article 3 TEU, relied on by Poland, sets out a number of essential objectives pursued by the European Union, which include, in addition to the well-being of peoples and cohesion between Member States, sustainable development and protection of the environment, without establishing a hierarchy between them. The achievement of those objectives must be the result of the policies and actions of the European Union and the Member States. **Therefore,** unlike the specific provisions of the FEU Treaty which give concrete expression to the general objectives laid down therein, **that provision may not be relied on to challenge the lawfulness of a Union act**.

In the fourth place, the Court considers that **the contested measures observe the principle of proportionality**. It notes that, in the fields relevant to the present cases, which involve complex political, economic or technical choices, **the EU**

legislature has broad discretion. Hence, the legality of a measure can be affected only if the measure is manifestly inappropriate having regard to the objective pursued. However, neither the choices made by the EU legislature at the time the measures in question in the present cases were adopted nor the detailed rules of their application can be regarded as being manifestly inappropriate in that regard.

In the fifth place, the Court also dismisses Poland's complaints alleging infringement of the **principle of equal treatment**. The differences in treatment alleged by Poland [18] relate to current performances of each Member State in the reduction of greenhouse gas emission in the LULUCF sector, and also its capacity to improve them. They can also be explained by the fact that certain installations must themselves bear the costs associated with the system for greenhouse gas emission allowance trading within the Union, whilst others may pass them on directly to the end consumers. Those differences in treatment are accordingly based on objective differences between the situations in question and do not disregard the principle of equal treatment.

NOTE: An action for annulment seeks the annulment of acts of the institutions, bodies, offices and agencies of the European Union that are contrary to EU law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The full text and, as the case may be, an abstract of the judgments (C-442/23, C-444/23, C-445/23, C-451/23, C-505/23, C-512/23 and C-771/23) are published on the CURIA website on the day of delivery.

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[1] Regulation (EU) 2023/839 of the European Parliament and of the Council of 19 April 2023 amending Regulation (EU) 2018/841 as regards the scope, simplifying the reporting and compliance rules, and setting out the targets of the Member States for 2030, and Regulation (EU) 2018/1999 as regards improvement in monitoring, reporting, tracking of progress and review.

[2] Case C-442/23.

[3] Regulation (EU) 2023/851 of the European Parliament and of the Council of 19 April 2023 amending Regulation (EU) 2019/631 as regards strengthening the CO2 emission performance standards for new passenger cars and new light commercial vehicles in line with the Union's increased climate ambition.

[4] Case C-444/23.

[5] Decision (EU) 2023/852 of the European Parliament and of the Council of 19 April 2023 amending Decision (EU) 2015/1814 as regards the number of allowances to be placed in the market stability reserve for the Union greenhouse gas emission trading system until 2030.

[6] Case C-445/23.

[7] Regulation (EU) 2023/857 of the European Parliament and of the Council of 19 April 2023 amending Regulation (EU) 2018/842 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement, and Regulation (EU) 2018/1999.

[8] Case C-451/23.

[9] 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.

[10] Case C-505/23.

[11] Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism.

[12] Case C-512/23.

[13] Directive (EU) 2023/1791 of the European Parliament and of the Council of 13 September 2023 on energy efficiency.

[14] Case C-771/23.

[15] Paris Agreement.

[16] On the basis of Article 192(1) TFEU and Article 194(2) TFEU.

[17] Referred to in Article 194(1) TFEU.

[18] In Cases C-442/23 and C-505/23.