

5. If the answer to question 4 is negative, may the fact that, in other proceedings brought before a national court, it was ruled, by final judgment, that, in accordance with the procedures laid down by the customs authorities, the holder of the customs procedure had not committed any infringement with regard to the 'free zone' customs procedure constitute a ground for exemption from the customs debt arising under Article 79(1)(a) and 3(a) of the Union Customs Code, in the light of the principle of *res judicata* laid down in national law and EU law?

- (<sup>1</sup>) Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code (OJ 2015 L 343, p. 1).
- (<sup>2</sup>) Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ 2013 L 269, p. 1).

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**Request for a preliminary ruling from the Vestre Landsret (Denmark) lodged on 21 June 2023 —  
Anklagemyndigheden v ILVA A/S**

**(Case C-383/23, ILVA)**

(2023/C 304/16)

*Language of the case: Danish*

**Referring court**

Vestre Landsret

**Parties to the main proceedings**

*Appellant:* Anklagemyndigheden

*Respondent:* ILVA A/S

**Questions referred**

1. Must the term 'undertaking' in Article 83(4) to (6) of the General Data Protection Regulation (<sup>1</sup>) be understood as an undertaking within the meaning of Articles 101 and 102 TFEU, in conjunction with recital 150 of that regulation, and the case-law of the Court of Justice of the European Union concerning EU competition law, so that the term 'undertaking' covers any entity engaged in an economic activity, regardless of that entity's legal status and the way in which it is financed?
2. If the answer to the Question 1 is in the affirmative, must Article 83(4) to (6) of the General Data Protection Regulation be interpreted as meaning that, when imposing a fine on an undertaking, regard must be had to the total worldwide annual turnover of the economic entity of which the undertaking forms part, or only the total worldwide annual turnover of the undertaking itself?

- (<sup>1</sup>) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ 2016 L 119, p. 1).

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**Action brought on 14 July 2023 — Republic of Poland v European Parliament and Council of the  
European Union**

**(Case C-442/23)**

(2023/C 304/17)

*Language of the case: Polish*

**Parties**

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

*Defendants:* European Parliament and Council of the European Union

### **Form of order sought**

The applicant claims that the Court should:

- annul, in its entirety, 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;<sup>(1)</sup>
- order the European Parliament and the Council of the European Union to pay the costs.

### **Pleas in law and main arguments**

In respect of Regulation 2023/839 ('the contested regulation'), Poland raises the following pleas in law:

1. Plea alleging infringement of Article 192(2)(c) TFEU

In Poland's view, the defendant institutions have infringed Article 192(2)(c) TFEU by failing to adopt the contested regulation on the basis of that Treaty provision, which requires unanimity in the Council, despite the fact that the contested regulation significantly affects a Member State's choice between different energy sources and the general structure of its energy supply.

2. Plea alleging infringement of the third indent of Article 192(2)(b) TFEU

In Poland's view, the defendant institutions have infringed the third indent of Article 192(2)(b) TFEU by failing to adopt the contested regulation on the basis of that Treaty provision, which requires unanimity in the Council, despite the fact that the contested regulation affects land use in the Member States.

3. Plea alleging infringement of Article 4(1) and Article 5(2) TEU

Poland is of the view that the defendant institutions have acted in breach of the principle of the conferral of powers, since the contested regulation establishes commitments and targets which significantly interfere with the way in which forest management is carried out in the Member States, despite the fact that the Treaties do not confer powers on the European Union in forestry matters.

4. Plea alleging breach of the principle of proportionality (Article 5(4) TEU) and the principle of equality of Member States (Article 4(2) TEU), as well as infringement of Article 191(2) TFEU

Poland considers that, by adopting the contested regulation, the defendant institutions have acted in breach of the principle of proportionality and the principle of equality of Member States and have not taken sufficient account of the diversity of situations in the various regions of the Union. Compliance by Poland with the commitments and targets in respect of greenhouse gas emissions and removals in the LULUCF (Land Use, Land Use Change and Forestry) sector is liable to have serious negative socio-economic and financial consequences. In addition, the contested regulation establishes an unjustified imbalance between individual Member States in terms of levels of commitments and targets.

5. Plea alleging failure to fulfil the obligation to carry out a proper analysis of the effect of the contested regulation, as well as infringement of Article 191(3) TFEU

In Poland's view, the defendant institutions have failed to fulfil the obligation to provide an adequate impact assessment, since the impact assessment accompanying the proposed regulation contains fundamental shortcomings as regards the effect on individual Member States of the commitments and targets set out in that regulation. At the same time, insufficient account has been taken of the available scientific and technical data, the environmental conditions in the various regions of the Union, and the potential benefits and costs connected with action or lack of action, as well as the economic and social development of the Union as a whole and the balanced development of its regions. This constitutes an infringement of Article 191(3) TFEU.

<sup>(1)</sup> OJ 2023 L 107, p. 1.