

ARTICLE

CLIMATE PACKAGE: POLAND HAS SUBMITTED AN APPEAL TO THE COURT OF JUSTICE

European Law | 04/10/23 |



To meet the target of reducing greenhouse gas emissions by 55% below 1990 levels before 2030, the European Union has approved a **series of laws that are being challenged by Poland before the Court of Justice of the European Union.**

An initial action has been brought to annul **Regulation 2023/839**, the primary objective of which is to amend Regulation 2018/841 on the inclusion of greenhouse gas emissions and removals resulting from land use, land use change and forestry in the 2030 climate and energy framework ("LULUCF" Regulation), and Regulation 2018/1999 with a view to improving monitoring, reporting, progress monitoring, and review mechanisms (Case C-442/23).

A second action seeks the annulment of **Regulation 2023/851** 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 (Case C-444/23).

A third appeal concerns **decision 2023/852** amending Decision 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 (Case C-445/23).

A fourth action is brought against **Regulation 2023/857** amending Regulation 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 2018/1999 (Case C-451/23)

The main arguments put forward are as follows.

Poland considers that, for each of these texts, the applicable legal basis was Article 192(2)(c) TFEU, which requires **unanimity** in the Council, since they significantly affect a Member State's choice between different energy sources and the general structure of its energy supply.

Poland also alleges, *inter alia*, disregard for the **principle of attribution of powers, energy solidarity, proportionality, and equality of Member States.** It also claims that there was no proper **impact assessment.**

In practice, in order to ensure its energy transition is in line with EU targets, Poland would undoubtedly have to close many coal-fired power stations while lacking sufficient resources to ensure the transition. Poland says its energy security could be at risk.

In addition, on 9 August 2023, the Polish government announced that it had also lodged an appeal with the Court of Justice of the European Union against Regulation 2023/956 of 10 May 2023 establishing a **carbon border adjustment mechanism (CBAM).** Poland considers that this text was also adopted by means of an inappropriate procedure insofar as it can be considered a fiscal measure requiring unanimity among member countries.

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2023:304:FULL>

