



Press and Information

Court of Justice of the European Union  
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Judgment in Case C-336/16  
Commission v Poland

## **The Court of Justice finds that Poland has infringed EU law on ambient air quality**

*The limit values for concentrations of PM<sub>10</sub> have been persistently exceeded in that Member State*

An EU directive,<sup>1</sup> which entered into force on 11 June 2008, codifies the pre-existing legislative measures relating to the assessment and management of ambient air quality. That directive lays down, in particular, limit values and alert thresholds for the protection of human health.

Particulate matter PM<sub>10</sub> is composed of a mixture of organic and non-organic substances present in the air. It may contain toxic substances such as polycyclic aromatic hydrocarbons, heavy metals, dioxin and furan. It contains elements with a diameter of less than 10 micrometres which may enter the upper respiratory tract and the lungs.

As it took the view that Poland was not in compliance with the daily and annual limit values for PM<sub>10</sub> in several zones and agglomerations and that it had not correctly transposed the provisions of the Directive concerning air quality plans, the Commission brought an action before the Court of Justice against that State for failure to fulfil obligations.

In today's judgment, the Court notes first of all that the fact of exceeding the limit values for PM<sub>10</sub> concentrations in the ambient air is sufficient in itself to establish a failure to fulfil obligations. In the present case, data derived from the annual reports on air quality submitted by Poland show that, between 2007 and 2015 inclusive, that Member State regularly exceeded, first, the daily limit values for PM<sub>10</sub> concentrations in 35 zones and, second, the annual limit values for such concentrations in nine zones. It follows that the exceedance thus established must be regarded as persistent.

Next, with regards the provision of the Directive under which, in the event of exceedances of the limit values for which the attainment deadline has already passed, the air quality plans must set out appropriate measures in order that the exceedance period can be kept as short as possible, the Court points out that those plans may be adopted only on the basis of the balance between the aim of minimising the risk of pollution and the various opposing public and private interests. In the present case, the obligation to establish air quality plans, in the event that the limit values for PM<sub>10</sub> concentrations in ambient air are being exceeded, has been binding on Poland since 11 June 2010. The plans adopted subsequently by Poland set the deadlines for putting an end to such exceedances between 2020 and 2024, depending on the different zones. Poland contends that those deadlines are fully adapted to the scale of the structural changes necessary to bring an end to those exceedances and it highlights in particular the difficulties arising from the socio-economic and financial challenge of the major technical investments to be carried out. According to the Court, while such factors may be taken into account, it has not yet been established that those difficulties, which are not exceptional, are such as to rule out shorter deadlines. Accordingly, the Court considers that Poland's argument cannot, in itself, justify such long deadlines for putting an end to those exceedances.

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<sup>1</sup> Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (OJ 2008 L 152, p. 1).

Furthermore, the Court finds that, by exceeding in four zones<sup>2</sup> the daily limit values for PM<sub>10</sub> concentrations in ambient air (increased by the margin of tolerance<sup>3</sup>), Poland has infringed EU law.

Finally, the Court holds that none of the plans on air quality adopted by Poland, whether at national or at regional level, expressly refers to the fact that those plans had to make it possible to limit exceedances of limit values to the shortest possible period, as is, however, required. In those circumstances, and taking account of the fact that the first three complaints have been upheld, it follows that the transposition of the Directive into Polish law cannot ensure the full and effective application of that directive.

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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 European Union 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.

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

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<sup>2</sup> The zones in question are those of Radom, Pruszków-Żyrardów and Kędzierzyn-Koźle (from 1 January 2010 to 10 June 2011), as well as that of Ostrów-Kępnno (from 1 January 2011 to 10 June 2011).

<sup>3</sup> In accordance with Article 22(2) of Directive 2008/50, where, in a given zone or agglomeration, conformity with the limit values for PM<sub>10</sub> as specified in Annex XI to that directive cannot be achieved because of site-specific dispersion characteristics, adverse climatic conditions or transboundary contributions, a Member State is exempt from the obligation to apply those limit values until 11 June 2011 on condition that that Member State shows that all appropriate measures have been taken at national, regional and local level to meet the deadlines. When it makes use of that exemption, the Member State concerned must ensure that the limit value for each pollutant is not exceeded by more than the maximum margin of tolerance specified in Annex XI for each of the pollutants concerned. In the case of PM<sub>10</sub>, that margin of tolerance is fixed at 50% of the limit values.