

### Pleas in law and main arguments

First of all, the Parliament points out that the preamble to the contested decision refers to the following legal bases: Article 8(3) of Council Decision 2005/387/JHA of 10 May 2005 on the information exchange, risk-assessment and control of new psychoactive substances <sup>(2)</sup> and the Treaty on the Functioning of the European Union. The Parliament infers therefrom that the Council implicitly refers to Article 34(2)(c) of the previous Treaty on European Union.

The Parliament relies on two pleas in law in support of its action for annulment.

In the first place, the Parliament claims that the Council based its decision on a legal basis, Article 34(2)(c) EU, which was repealed when the Treaty of Lisbon entered into force. Accordingly, the contested decision is no longer based solely on Decision 2005/387/JHA. The latter constitutes a secondary legal basis and is thus unlawful.

In the second place, and in the light of the foregoing, the Parliament considers that the legislative process is vitiated by infringements of essential procedural requirements. First, if Article 34(2)(c) EU had been applicable, the Parliament should have been consulted before the adoption of the contested decision in accordance with Article 39(1) EU. However, the Parliament claims that that was not the case. Secondly, if it is held that the applicable provisions are those derived from the Treaty of Lisbon, the Parliament should have been involved in the legislative procedure on the basis of Article 83(1) TFEU. In either case, since the Parliament was not involved in the adoption of the contested decision, the latter is vitiated by an infringement of essential procedural requirements.

Finally, if the Court decides to annul the contested decision, the Parliament considers that it would be necessary, in accordance with the second paragraph of Article 264 TFEU, to maintain the effects of the contested decision until it is replaced by a new measure adopted in the prescribed manner.

<sup>(1)</sup> OJ 2013 L 72, p. 11.

<sup>(2)</sup> OJ 2005 L 172, p. 32.

### Action brought on 12 June 2013 — European Commission v Republic of Poland

(Case C-320/13)

(2013/C 226/14)

*Language of the case: Polish*

#### Parties

*Applicant:* European Commission (represented by: P. Hetsch and K. Herrmann, Agents)

*Defendant:* Republic of Poland

### Form of order sought

- declare that, by failing to adopt the laws, regulations and administrative provisions necessary to ensure compliance with 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, <sup>(1)</sup> and in any event by not notifying the Commission of such provisions, the Republic of Poland has failed to fulfil its obligations under Article 27(1) of that directive;
- impose upon the Republic of Poland, in accordance with Article 260(3) TFEU, a penalty payment for failure to fulfil its obligation to notify measures transposing Directive 2009/28/EC at the daily rate of EUR 133 228,80 from the day on which judgment is delivered in the present case;
- order the Republic of Poland to pay the costs of the proceedings.

### Pleas in law and main arguments

The period for transposing Directive 2009/28/EC expired on 5 December 2010.

<sup>(1)</sup> OJ 2009 L 140, p. 16.

### Action brought on 11 June 2013 — European Commission v Kingdom of Belgium

(Case C-321/13)

(2013/C 226/15)

*Language of the case: French*

#### Parties

*Applicant:* European Commission (represented by: J. Hottiaux and N. Yerrell, acting as agents)

*Defendant:* Kingdom of Belgium

### Form of order sought

- declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to transpose Commission Directive 2010/61/EU of 2 September 2010 adapting for the first time the Annexes to Directive 2008/68/EC of the European Parliament and of the Council on the inland transport of dangerous goods to scientific and technical progress <sup>(1)</sup> and, in any event, by failing to communicate them to the Commission, the Kingdom of Belgium has failed to fulfil its obligations under Article 2(1) of that directive;