

WHOSE JURISDICTION? PENALTY PAYMENTS FOR  
FAILING TO EXECUTE INTERIM MEASURES UNDER  
ARTICLE 279 TFEU IN *POLAND V COMMISSION*

*A chi spetta la giurisdizione? Sanzioni pecuniarie per mancata esecuzione di misure cautelari ai sensi dell'art. 279 TFUE in Polonia c. Commissione*

*Quelle est la juridiction compétente? Sanctions pécuniaires en cas de non-respect des mesures provisoires au titre de l'article 279 TFUE dans l'affaire Pologne c. Commission*

General Court, Joined Cases T-830/22, T-156/23, *Poland V Commission*,  
And Case T-1033/23, *Poland V Commission*

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*Introduction*

When the Court of Justice of the European Union (CJEU, Court of Justice) imposes penalty payments on a Member State for failing to comply with a judgment, it falls to the European Commission (Commission) to determine whether the Member State has brought its national law in line with the judgment. If compliance has not been achieved, the Commission will initiate a payment order, issue a compensation decision, or offset the payment to recover the outstanding amount. Should a Member State dispute the Commission's assessment, it has the right to challenge the legality of the payment order, compensation decision, or setoff of the payment before European Courts – this is what happened in the cases *Poland v Commission* T-830/22, T-156/23, and *Poland v Commission* T-1033/23.

In a judgment on 5 February 2025, the General Court (GC) ruled in favour of the Commission in three significant cases brought by Poland, reaffirming the enforceability of financial penalties imposed by the CJEU in a significant rule-of-law-related infringement proceeding. These cases – Joined Cases T-830/22 and T-156/23, as well as case T-1033/23 – concerned Poland's attempt to annul three Commission setoff decisions

recovering approximately € 320 million in unpaid penalty payments from Poland. According to the GC, the Commission legitimately enforced the penalty payment in respect of the period from 15 July 2021 to 4 June 2023. The rulings by the GC underscore the Commission's discretion in enforcing financial sanctions via setoffs and provide further clarity on the jurisdictional divide between the CJEU and the GC in enforcement disputes.

A crucial distinction that should be made clearer at the outset concerns the different types of penalty payments under EU law. Article 260 (2) and (3) TFEU establish financial sanctions imposed by the CJEU when a Member State fails to comply with a judgment finding an infringement of EU law. These penalties serve as coercive measures to ensure compliance with obligations already determined by the Court. By contrast, penalty payments under Article 279 TFEU relate to interim measures, which the Court may impose to preserve the status quo or prevent irreparable harm while a case is pending. The purpose of these latter penalties is to guarantee the effectiveness of provisional judicial protection rather than to enforce compliance with a final ruling. While the article elaborates on these differences in detail, the three cases concerned penalty payments under Article 279 TFEU relating to Poland's failure to implement interim measures in C-204/21.

### *Legal and Procedural Background*

Poland's legal challenge arose from the Commission's enforcement of a penalty payment ordered by the CJEU in case C-204/21, *Commission v Poland*. In this case, the Commission brought an infringement proceeding under Article 258 TFEU against Poland for its judicial reforms, which undermined judicial independence by violating the value of the rule of law in Article 2, the principle of effective judicial protection in Article 19 TEU, and in conjunction with the right to an effective remedy and to a fair trial in Article 47 of the Charter of Fundamental Rights of the European Union (Charter). Additionally, and to prevent further damage due to the Polish muzzle law, the Commission also brought an application for interim measure under Article 279 TFEU.

### *A Tale of Three Court Orders in C-204/21*

The CJEU was relatively quick in responding to those interim measures and on 14 July 2021 required Poland's under Article 279 TFEU to immediately suspend certain national judiciary provisions. Poland did not follow the CJEU's order, instead, it disputed the jurisdiction of the

Court. Due to Poland's non-compliance, a second order on 27 October 2021 imposed daily penalty payments of € 1 million. This was the first time that the CJEU had issues such a high daily fine, however, it was warranted by the gravity of the violations. As a reaction, Poland sought to comply with the first order and after implementing some changes to the Polish judicial system, the penalty payments were, in a third order on 21 April 2023, reduced to € 500,000 per day. However, Poland would still dispute and not pay the accumulated fines.

Faced with Poland's refusal to voluntarily pay, the Commission exercised its power under the Financial Regulation (Regulation 2018/1046) to recover Member States debt via offsetting against EU funds. Poland subsequently challenged the legality of the Commission's setoff decisions before the GC, arguing (i) that an infringement of Article 101 and 102 of the Financial Regulation, read together with Article 98 of that regulation, in so far as the Commission applied a procedure for recovery by offsetting despite the absence of the Republic of Poland's debt, (ii) that the changes to the Polish judiciary of 9 June 2022 were sufficient to comply with all the interim measures set out in the order of 14 July 2021 and that, therefore, penalty payments after that date had no basis, and (iii) that the enforcement of the penalty payment in its full amount for the period from 15 July 2022 to 28 October 2022 was contrary to the principle of proportionality and to the objective of the interim measures.

In an earlier case concerning outstanding Polish debts, the GC rendered a ruling in which it explained the consequences of removing a case in the main proceedings on the penalties adopted by the judge hearing an application for interim measures under Article 279 TFEU<sup>1</sup>. More specifically, in T-200/22 and T-314/22, the GC held that the removal of a case from the register does not extinguish the Member State's obligation to pay the penalty payments relating to the period prior to that removal. This approach aligns with the underlying purpose of penalty payments, namely to ensure compliance with interim measures and to dissuade Member States from unduly delaying their implementation. Furthermore, the GC's conclusion that the removal of an infringement case from the register does not nullify penalty payments imposed during the main proceedings is a well-founded and legally sound determination.

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<sup>1</sup> See, in this *Review*, M. F. ORZAN, *Le conseguenze di una cancellazione dal ruolo di un ricorso principale sulle penali adottate dal giudice cautelare ai sensi dell'art. 279 TFUE*, 2024.

### *Some General Remarks on Penalty Payments and the Statue of the CJEU*

Disputes over the enforcement of penalty payments under Article 260 (2) and (3) TFEU have historically raised jurisdictional challenges. While actions seeking the annulment of a payment order or compensation decision fall within the GC's jurisdiction for annulment proceedings, the substantive question of whether a Member State has complied with EU law remains within the exclusive jurisdiction of the CJEU. This jurisdictional tension was addressed through an amendment to the Statute of the Court of Justice in 2019, which reassigned litigation concerning lump sums or penalty payments under Article 260 (2) and (3) TFEU directly to the CJEU.

Notably, in Spring 2019, the Court adopted Regulation 2019/629, which reassigned jurisdiction over annulment actions by Member States to the CJEU. This decision was made since such cases often involve financial sanctions of Member States, a matter falling under the CJEU's jurisdiction. As a result, rather than the 2018 proposal taking effect, which proposed the transfer of jurisdiction over cases regarding infringement rights to the GC, the CJEU saw a slight expansion of its responsibilities. However, not in this case, as the GC assumed jurisdiction since the penalty payments that Poland challenged were under Article 279 and not Article 260 TFEU – a neglected consequence of the half-baked 2019 Statute's reform.

#### *Findings of the General Court in T-830/22 and T-156/23*

The GC dismissed Poland's claims in their entirety, affirming the Commission's authority to offset penalties against EU funds and rejecting Poland's argument that the legislative changes invalidated the payment obligation.

#### *Jurisdiction*

First, the Commission disputed the GC's jurisdiction in this case, since although the actions for annulment are directed against setoff decisions of the Commission, they do not relate to the formal conditions for offsetting the amounts provided for in Article 101 and 102 of the Financial Regulation, but seek, in reality, to have the Court determine whether a debt continued to arise in respect of the daily penalty payment of € 1,000,000 imposed by the order of 27 October 2021, *Commission v Poland* (C-204/21 R) (para. 23).

The GC dismissed those arguments and assumed jurisdiction, clarifying that the 2019 jurisdictional derogation applied exclusively to penalty payments under Article 260 (2) and (3) TFEU, not to those imposed under Article 279 TFEU. This strict interpretation of the 2019 reform resulted in the GC, once again, assessing whether a Member State's national law complied with EU law – precisely the type of review the reform had sought to prevent (para. 30).

### *Substance*

On the substance, the GC rejected Poland's three claims on merely procedural grounds, without engaging in a substantive evaluation of whether Polish law complied with EU law (something which the Court of Justice has already done in its judgment of 5 June 2023 in *Commission v Poland* C-204/21).

Regarding Poland's first claim, seeking the annulment of the contested decision in their entirety due to an infringement of Article 101 and 102 of the Financial Regulation, the GC quashed Poland's two-sided argumentation. First, Poland alleged that the CJEU had ruled *ultra vires* in the orders of C-204/21 – the ghost of some *BVerfG*'s rulings (para. 34). Second, Poland argued that its national legal changes on 15 July 2022 remedied the previous CJEU order and, therefore, further penalty payments had no basis (para. 38).

Regarding Poland's first argument the GC recalled that national provisions on the organisation of justice in the Member States may be subject to review in the light of the second subparagraph of Article 19(1) TEU in the context of an action for failure to fulfil obligations. Consequently, interim measures aimed at the suspension of national law that are ordered by the CJEU, under Article 279 TFEU remain valid. The fact that a national constitutional court declares such interim measures *ultra vires* and as contrary to the constitutional order of the Member State in no way alters that assessment (para. 36). Regarding Poland's second claim, the GC held that the mere adoption of new national legislation did not retroactively extinguish Poland's obligation to pay the penalty payments accrued prior to the CJEU's order reducing the amount. Since the legislative changes did not fully remedy the rule-of-law deficiencies, the penalties remained legally enforceable (para. 40).

In the alternative, Poland sought a partial annulment of the contested decisions, due to an infringement of its procedural rights and a wrong assessment of the procedure for recovery by offsetting (para. 45). The GC rejected both claims and held the Commission correctly applied the original penalty rate for the period preceding the legal changes in Poland

and the reduced rate for the period thereafter. Poland's claim that the Commission has the obligation to adjust the amount of the daily penalty payment according to the level of compliance is untenable (para. 60). Moreover, the GC also rejected Poland's claim that the offsetting mechanism deprived it of procedural safeguards and violated the principle of proportionality and equality before the law, emphasizing that the penalty payment is only subject to judicial scrutiny by the CJEU and the Commission does not have the legal competence to adjust it (para. 62). Plus, Poland had ample opportunity to challenge both the initial penalties and their enforcement. However, at that time it did not make an application for the cancellation or variation (para. 63).

Overall, the GC also reaffirmed the Commission's right to recover unpaid penalties through offsetting under the Financial Regulation, aligning with established case law on the enforcement of financial sanctions against Member States. This ruling reinforces the principle that Member States cannot evade their financial obligations by unilaterally refusing to pay penalties imposed by the CJEU.

#### *Jurisdictional Considerations*

A particularly noteworthy aspect of these cases concerns the GC's jurisdiction in disputes involving financial penalties. The execution of penalties under Article 260 (2) and (3) TFEU typically falls within the exclusive competence of the CJEU. However, Poland's challenge to the Commission's setoff decisions was framed as an annulment action under Article 263 TFEU against interim measures under Article 279 TFEU, thereby bringing it within the GC's jurisdiction.

This distinction is relevant, as Poland contested the Commission's compensation decisions related to penalties imposed under Article 279 TFEU for non-compliance with interim measures. The GC's acceptance of jurisdiction in this matter, despite the 2019 CJEU Statute amendments aimed at reserving such disputes to the CJEU, raises questions about the coherence of the jurisdictional framework governing enforcement actions. The GC reasoned that because the compensation decisions were administrative acts of the Commission, rather than judicial determinations of compliance, they fell within its remit under Article 263 TFEU (paras. 26-31). This reasoning, however, does not fully resolve the potential conflict between judicial authority over compliance assessments and administrative enforcement powers.

#### *Broader Implications and Future Concerns*

The GC's rulings have significant implications for EU litigation concerning the enforcement of CJEU judgments, particularly in politically sensitive cases involving rule-of-law disputes. First, the decisions confirm that financial penalties remain enforceable even where a Member State undertakes partial reforms, unless and until full compliance is established to the satisfaction of the CJEU. This strengthens the deterrent effect of Article 260 TFEU penalties and signals that compliance cannot be achieved through piecemeal legislative amendments.

Second, the rulings clarify the extent of the Commission's enforcement powers, reinforcing its ability to use offsetting as a mechanism to ensure payment of penalties. While this approach has proven effective in compelling Member States to fulfil their financial obligations, it also raises concerns about the balance of power between the Commission and Member States. The fact that Poland's arguments regarding procedural safeguards and proportionality were summarily dismissed may prompt further challenges from other Member States seeking to limit the Commission's enforcement discretion.

Third, the jurisdictional tension between the GC and the CJEU in execution-related disputes remains unresolved. The GC's decision to accept jurisdiction over the Commission's setoff decisions underlines the need for further clarification on the division of competences between the EU's judicial and administrative bodies. A potential reform of the Statute of the Court of Justice could address these ambiguities, ensuring that execution-related litigation is handled within a consistent and predictable framework.

### *Conclusion*

The GC's judgments reaffirm the robustness of the EU's enforcement mechanisms in cases concerning the rule of law. By upholding the Commission's power to recover penalty payments via offsetting, the Court has strengthened the credibility of financial sanctions as a tool for ensuring Member State compliance with CJEU rulings. However, the jurisdictional tensions exposed by these cases highlight the need for further clarity in delineating the respective roles of the CJEU and the GC in enforcement litigation. The evolving case law in this area will shape the EU's approach to compliance mechanisms moving forward. Additionally, as similar rule-of-law disputes continue to arise, these judgments provide a blueprint for how the EU legal order will manage recalcitrant Member States that challenge the supremacy of EU law and their obligations under the Treaties.

Having said that, the issue of jurisdiction remains unresolved with this

judgment. While the GC's ruling enhances the effectiveness of the system by upholding the legitimacy of offset decisions, it is indeed important to recognize that a solid jurisdictional foundation is essential to sustain the credibility of compliance mechanisms, particularly in light of the 2019 statutory amendments. Therefore, while the GC's ruling strengthens enforcement, it does not fully resolve all underlying legal uncertainties. In conclusion, while enforcement has been reinforced, unresolved jurisdictional questions continue to pose challenges. In the long term, jurisdiction will remain a key factor in assessing the long-term credibility of the compliance system.