



C A D W A L A D E R
CLIMATE
Connecting Climate Change and the Law

Croatia, Hungary and Portugal Referred to the Court of Justice of the European Union by the European Commission

March 3, 2023



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On February 15, 2023, the European Commission referred Croatia, Hungary, and Portugal to the Court of Justice of the European Union for failing to transpose the EU’s Renewable Energy Directive (Directive) into national legislation. In a [press release](#), the EC stated that it was “hereby taking legal steps to ensure the development of renewable energy across the EU and to reduce greenhouse gas emissions, energy dependency and high prices.”

The [Directive](#) was enacted on December 11, 2018 to further the EU’s goal of promoting renewable energy. Among other things, the Directive created a common “legal framework for the development of renewable energy in electricity, heating and cooling, and transport,” and “an EU-level binding target for 2030 of at least 32% renewable energy” in the EU’s gross final consumption of energy. EU Member States were required to transpose the Directive by June 30, 2021, and immediately communicate such text to the EC. Despite first receiving a [reasoned opinion](#) from the EC in May 2022 urging them to comply with the transposition requirements, Croatia, Hungary, and Portugal failed to notify the EC of having done so.

Under the Treaty on the Functioning of the EU, Member States that do not comply with a reasoned opinion within the designated period of time are subject to [infringement procedures](#) and financial sanctions in the Court of Justice. [EC guidance](#) explains that “the sanction imposed by the Court may be composed of a lump sum payment, as a consequence of the continuation of the infringement until the delivery of its judgment or full compliance, if reached earlier, and a daily penalty payment, to prompt the Member State concerned to bring the infringement to an end as soon as possible after the delivery of the judgment.” The Court of Justice has discretion to determine the amount of any sanctions imposed based on “three

fundamental criteria: the seriousness of the infringement, its duration, [and] the need to ensure that the financial sanction itself is a deterrent to further infringements.” The purpose of the sanctions regime “is to incentivise Member States to transpose directives” adopted by the EU within the proscribed deadlines “to ensure that [EU] legislation is genuinely effective.”

Taking The Temperature: As we have previously reported, regulators in the U.S. and elsewhere have been **commencing enforcement actions** into greenwashing and other climate-related issues at an **increasing pace** over the past twelve months. Likewise, there has been significant rule-making activity regarding **climate disclosure and governance**. At the same time, **governments** and **government-funded multilateral development banks** have been taking concrete steps to help finance green transition efforts. The EU’s referral of Croatia, Hungary, and Poland to the Court of Justice continues this trend—which shows no signs of abating—of substantial overall government and regulatory activity arising from climate issues, albeit in a different context.