

**Action brought on 24 May 2019 — Republic of Poland v European Parliament and Council of the European Union**

**(Case C-401/19)**

*Language of the case: Polish*

**Parties**

*Applicant:* Republic of Poland (represented by: B. Majczyna, acting as agent, W. Gonatarski, adwokat)

*Defendants:* European Parliament, Council of the European Union

**Form of order sought**

The applicant claims that the Court should:

annul Article 17(4)(b) and Article 17(4)(c), *in fine* (i.e. the part containing the following wording: ‘and made best efforts to prevent their future uploads in accordance with point (b)’ ) of Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC; [1](#)

order European Parliament and Council of the European Union to pay the costs.

**Pleas in law and main arguments**

The Republic of Poland seeks the annulment of Article 17(4)(b) and Article 17(4)(c), *in fine* (i.e. the part containing the following wording: ‘and made best efforts to prevent their future uploads in accordance with point (b)’ ) of Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (OJ EU L 130 of 17.5.2019, p. 92) and an order that the European Parliament and the Council of the European Union are to pay the costs.

In the alternative, should the Court find that the contested provisions cannot be deleted from Article 17 of Directive (EU) 2019/790 without substantively changing the rules contained in the remaining provisions of that article, the Republic of Poland claims that the Court should annul Article 17 of Directive (EU) 2019/790 in its entirety.

The Republic of Poland raises against that the contested provisions of Directive 2019/790 a plea alleging infringement of the right to freedom of expression and information guaranteed by Article 11 of the Charter of Fundamental Rights of the European Union.

The Republic of Poland claims specifically that the imposition on online content-sharing service providers of the obligation to make best efforts to ensure the unavailability of specific works and other subject matter for which the rightholders have provided the service providers with the relevant and necessary information (point (b) of Article 17(4) of Directive 2019/790) and the imposition on online content-sharing service providers of the obligation to make best efforts to prevent the future uploads of protected works or other subject-matter for which the rightholders have lodged a sufficiently substantiated notice (point (c), *in fine*, of Article 17(4) of Directive 2019/790) make it necessary for the service providers — in order to avoid liability — to carry out prior automatic verification (filtering) of content uploaded online by users, and therefore make it necessary to introduce preventive control mechanisms. Such mechanisms undermine the essence of the right to freedom of expression and information and do not comply with the requirement that limitations imposed on that right be proportional and necessary.

<sup>1</sup> OJ 2019 L 130, p. 92.