

CARBON MARKET TRADING SCHEME (ETS)

CJEU

Joined Cases C-191/14 and C-192/14 *Borealis Polyolefine GmbH and OMV Refining & Marketing GmbH v Bundesminister für Land-, und Forstwirtschaft, Umwelt und Wasserwirtschaft* ; **Case C-295/14** *DOW Benelux BV and Others v Staatssecretaris van Infrastructuur en Milieu and Others* ; and **Joined Cases C-389/14, C-391/14 to C-393/14** *Esso Italiana Srl and Others, Api Raffineria di Ancona SpA, Lucchini in Amministrazione Straordinaria SpA and Dalmine SpA v Comitato nazionale per la gestione della direttiva 2003/87/CE e per il supporto nella gestione delle attività di progetto del protocollo di Kyoto and Others* [2016] C:2016:311

28 April 2016

Directive 2003/87/EC - Article 10a(5) - Method for allocating allowances – Free allocation of allowances - Obligation for the Commission to determine the correction factor where the preliminary amount of allowances allocated free of charge to installations exceeds the maximum annual amount of allowances - Method for calculating the uniform cross-sectoral correction factor - Possibility for industrial installations to receive free allowances for certain emissions which are related to electricity generation - The correction factor seeks to compensate the taking into account of emissions associated with electricity generation from waste gases and of heating produced in cogeneration when determining the preliminary amount of allowances to be allocated free of charge - Validity of Article 15(3) of Decision 2011/278/EU

Decision 2013/448/EU - Obligation for the Commission to refer to installations included in the ETS starting in 2013 – Impossibility to refer to national data regarding emissions by new activities carried out in installations subject to the program before 2013 - Invalidation of Article 4 and Annex II of Decision 2013/448/EU

Case C-425/13 *Commission v Council* [2015] C:2015:483

16 July 2015

Council decision authorising the opening of negotiations on linking the EU greenhouse gas emissions trading scheme with a greenhouse gas emissions trading system in Australia - Council Decision authorizing the negotiations - Directives regarding the negotiations – Special committee - Articles 13(2) TEU, 218(2) to (4) TFEU and 295 TFEU - Loyal cooperation – Institutional balance

Case C-43/14 *ŠKO-ENERGO s. r. o. v Odvolací finanční ředitelství* [2015] EU:C:2015:120.

26 February 2015

Article 10 - Principle of the allocation of allowances free of charge - Application of gift tax to such an allocation – Prohibition of the direct fixing of a price for the allocation of emission allowances as well as the subsequent levying of a charge in respect of their allocation – Objective of the gift tax: additional revenue for operators of photovoltaic power stations – National objective falling outwith the scope of ambit of the 2003/87 Directive – Inapplicability of Article 113 TFEU

Cases C-566/11, C-567/11, C-580/11, C-591/11, C-620/11 and C-640/11 *Iberdrola and Others* [2013] EU:C:2013:660

17 October 2013

Article 10 - Principle of the allocation of allowances free of charge –Freedom to adopt economic policy measures determining the manner in which the value of the emission allowances allocated free of charge to producers is to be passed on to consumers – Obligation that national measure are not neutralising the ‘free of charge’ nature of emission allowances – Prohibition of the direct fixing of a price for the allocation of emission allowances as well as the subsequent levying of a charge in respect of their allocation

Incorporation by electricity producers in their selling prices of the value of the emission allowances - Windfall profits for electricity producers – National measure mitigating the effects of the windfall profits accrued through the allocation of emission allowances free of charge on the Spanish electricity market

Objective of the allocation of emission allowances free of charge: preventing undertakings from losing competitiveness – Objective not directly related to the environmental objective of reducing emissions – National measure does not remove the incentive to reduce greenhouse gas emissions

Case C-203/12 *Billerud Karlsborg AB and Billerud Skärblacks AB v Naturvårdsverket* [2013] nyr.

17 October 2013

Directive 2003/87/EC - Scheme for greenhouse gas emission allowance trading - Penalty for excess emissions - Concept of excess emission - Equated with infringement of the obligation to surrender, within the time periods prescribed by the directive, a sufficient number of allowances to cover the emissions from the previous year - No exculpatory cause in the event of actual holding of non-surrendered allowances, unless force majeure - No possibility of varying the amount of the penalty - Proportionality.

Case C-505/09 P *Estonia v Commission* [2012] nyr.

29 March 2012

Appeal - Directive 2003/87/EC –Greenhouse gas emission allowance trading scheme (GHG ETS) - National allocation plan for emission allowances for the Republic of Estonia for the period 2008 to 2012 - Respective competences of the Commission and the Member States - Article 9(1) and (3) and Article 11(2) of Directive 2003/87 - Equal treatment - Principle of sound administration.

Case C-504/09 P *Poland v Commission* [2012] nyr.

29 March 2012

Appeal - Directive 2003/87/EC - GHG ETS - National allocation plan for emission allowances for the Republic of Poland for the period 2008 to 2012 - Article 9(1) and (3) and Article 11(2) of Directive 2003/87 - Respective competences of the Commission and the Member States - Equal treatment.

Case C-366/10 *Air Transport Association of America* [2011] nyr.

21 December 2011

Reference for a preliminary ruling - Directive 2003/87/EC - GHG ETS - Directive 2008/101/EC - Inclusion of aviation activities in that scheme - Validity - Chicago Convention - Kyoto Protocol - EU-United States Air Transport Agreement - Principles of customary international law - Legal effects thereof - Whether they may be relied upon - Extraterritoriality of European Union law - Meaning of ‘charges’, ‘fees’ and ‘taxes’

Case C-279/08 P *Netherlands v Commission* [2011] ECR I-7671

8 September 2011

Appeal - State aid - Article 87(1) EC - Emission trading scheme for nitrogen oxides - Classification of the national measure as State aid - Decision declaring aid to be compatible with the common market - Concept of selectivity - Advantage financed through State resources - Protection of the environment - Obligation to state the reasons for decision - Admissibility.

Case C-524/09 *Caisse de Lyon v Caisse des dépôts et consignations* [2010] ECR I-14115.

22 December 2010

Aarhus Convention - Directive 2003/4/EC - Public access to information in environmental matters - Directive 2003/87/EC - Scheme for greenhouse gas emission allowance trading - Regulation (EC) No 2216/2004 - Standardised, secured system of registries - Access to data on greenhouse gas emission allowance trading - Refusal to report - Central administrator - Administrators of national registries - Confidential nature of the data held in the registries - Exceptions.

Case C-127/07 *Société Arcelor Atlantique et Lorraine and Others* [2008] ECR I-9895

16 December 2008

Environment - Integrated pollution prevention and control - GHG ETS - Directive 2003/87/EC - Scope - Installations in the steel sector included - Installations in the chemical and non-ferrous metal sectors excluded - Principle of equal treatment.

Case C-6/08 P *US Steel Košice v Commission* (Order of the Court) [2008] ECR I-96.

19 June 2008

Appeal - Directive 2003/87/EC - GHG ETS - Integrated pollution prevention and control - Slovak Republic - Act of Accession - Allocation of allowances - Period 2008-12 - Conditions - Whether directly affected - Inadmissibility.

Case C-503/07 P *Saint-Gobain Glass Deutschland GmbH v Commission* (Order of the Court) [2008] ECR I-2217.

8 April 2008

Appeal - Directive 2003/87/EC - Inadmissibility.

General Court

Case T-57/11 *Castelnou Energía, SL v European Commission* [2014].

4 December 2014

State Aids - Electricity Production - Compensation of supplementary production costs – Public service obligation to produce electricity quotas from “indigenous” coal– Service of general economic interest– Security of supply – Article 11(4) of Directive 2003/54/CE concerning common rules for the internal market in electricity – Development of “indigenous” supply sources – Environmental protection – No obligation for the commission to assess the impact of the State Aid on Directive 2003/87/EC establishing a Scheme for GHG

Case T-614/13 *Romonta GmbH v Commission* [2014].

26 Septembre 2014.

Article 10a of Directive 2003/87/EC - Allocation of emission allowances free of charge from 2013- Decision 2011/278/UE determining transitional Union-wide rules for harmonised free allocation of emission allowances – National executive measures – Treibhausgas-Emissionshandelsgesetz - Allocation by the German authorities of additional emission allowances where the plant operator faces excessive difficulties – Commission refusal - Risk that competition be impaired – Fundamental rights – Freedom to choose an occupation - Freedom to conduct a business - - Right of ownership – Act of God - Proportionality – Complete harmonization of the regime of allocation of emission allowances free of charge – Absence of discretionary power – Principle of Subsidiarity

Case T-317/12 *Holcim (Romania) SA v European Commission* [2014].

18 Septembre 2014.

Non-contractual liability - Scheme for greenhouse gas emission allowance trading - Liability for fault - Commission's refusal to disclose information on and to prohibit all transactions involving emission allowances allegedly stolen - Sufficiently serious breach of a rule of law conferring rights on individuals - Strict liability.

Case T-370/11 *Poland v Commission* [2013] nyr.

7 March 2013

Directive 2003/87/EC - GHG ETS - Transitional rules for harmonised free allocation of emission allowances from 2013 - Benchmarks to be applied to calculate the allocation of emission allowances - Equal treatment - Proportionality.

Case T-237/09 *Région wallonne v Commission* [2012] nyr.

1 February 2012

Directive 2003/87/EC – GHG ETS – National emission allowance allocation plan for Belgium in respect of the period from 2008 to 2012 – Article 44 of Regulation (EC) No 2216/2004 – Subsequent correction – New entrant – Decision instructing the Central Administrator of the Community independent transaction log to enter a correction into the national allocation plan table.

Case T-369/07 *Latvia v Commission* [2011] ECR II-1039

22 March 2011

Directive 2003/87/EC - GHG ETS - National allocation plan for the allocation of emission allowances for Latvia for the period from 2008 to 2012 - Three-month time-limit - Article 9(3) of Directive 2003/87.

Case T-16/04 *Arcelor SA v Parliament and Council* [2010] ECR II-211

2 March 2010

Directive 2003/87/EC - GHG ETS - Action for annulment - Lack of direct and individual concern - Action for damages - Admissibility - Sufficiently serious breach of a higher-ranking rule of law conferring rights on individuals - Right to property - Freedom to pursue a trade or profession - Proportionality - Equal treatment - Freedom of establishment - Legal certainty.

Case T-263/07 *Estonia v Commission* [2009] ECR II-3463

23 September 2009

Directive 2003/87/EC - GHG ETS - National plan allocating emissions allowances for Estonia for the period from 2008 to 2012 - Respective powers of the Member States and the Commission - Equal treatment - Article 9(1) and (3) and Article 11(2) of Directive 2003/87.

Case T-183/07 *Poland v Commission* [2009] ECR II-3395

23 September 2009

Directive 2003/87/EC - GHG ETS - National allocation plan for emission allowances for Poland for the period from 2008 to 2012 - Three month time-limit - Respective powers of the Member States and the Commission - Equal treatment - Duty to state reasons - Article 9(1) and (3) and Article 11(2) of Directive 2003/87.

Case T-233/04 *Netherlands v Commission* [2008] ECR II-591

10 April 2008

Directive 2001/81/EC - National measure establishing an emission trading scheme for nitrogen oxides - Decision finding the aid compatible with the common market - Admissibility - Advantage - Measure lacking selective character.

Case T-374/04 *Germany v Commission* [2007] ECR II-4431

7 November 2007

Directive 2003/87/EC - GHG ETS - German national allocation plan for emission allowances - Measures for the ex-post adjustment of the amount of allowances allocated to installations - Commission rejection decision - Equal treatment - Duty to state reasons.

Case T-178/05 *United Kingdom v Commission* [2005] ECR II-4807

23 November 2005

Directive 2003/87/EC - GHG ETS - Proposed amendment to national allocation plan - Refusal by the Commission - Action for annulment