

ECJ invalidates maximum annual free allowances for greenhouse gas emissions

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Introduction

The European Court of Justice (ECJ) has declared invalid the maximum annual free allowances for greenhouse gas emissions set out in European Commission Decision 448/2013. The ECJ judgment⁽¹⁾ followed a request for a preliminary ruling by the Lazio Administrative Court (as well as similar requests issued by courts in the Netherlands and Austria). In particular, a number of cases were brought before the Lazio Regional Administrative Court by undertakings which emit greenhouse gases, claiming that certain decisions of the National Committee for the Management of EU Directive 2003/87/EC and for Support in the Management of Project Activities under the Kyoto Protocol (Decisions 29/2013, 10/2014 and 16/2014) were unlawful insofar as the correction factor was applied, when the correction factor itself was inconsistent with Article 10a(5) of the directive. The Italian court underlined that data used by the European Commission in determining the correction factor used for calculating free allowances was inconsistent, as it was based on different interpretations of the directive. Thus, the court referred to the ECJ for a preliminary ruling on questions concerning the coherence and adequacy of the data submitted to the commission by different member states and the validity of the maximum annual amount of free allowances.

Decision

In its judgment the ECJ pointed out that the different language versions of Subparagraph (b) of Article 10a(5) of the directive – which establishes how the maximum annual amount of allowances should be calculated – were inconsistent. For instance, the Italian⁽²⁾ version refers to "emissions from installation... which are only included in the Community scheme from 2013 onwards", while the French version refers to "emissions... which are included into the Community scheme from 2013 onwards".

According to settled case law, where there is a discrepancy between the language versions of a provision, the provision must be interpreted by taking into account its context and purpose. In this regard, it should be taken into account that the scope of the directive was broadened in 2013 to include new sectors, such as the production of aluminium and certain chemical industries; consequently, the quantity of allowances to be allocated across the European Union was amended. In this context, according to the ECJ, it was clear that Article 10a(5) refers to emissions from installations that are included in the allowance trading scheme only starting from 2013.

However, it was evident from the documents and observations submitted by the commission in the proceedings that the data on which the commission had based the determination of the maximum annual amount of allowances also included emissions of installations covered by the allowance trading scheme before 2013.

Therefore, the commission did not determine the maximum annual amount of allowances in accordance with Subparagraph (b) of Article 10a(5) of the directive. Whereas the calculation of the

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correction factor was based on the annual amount of allowances, it followed that the correction factor, laid down in Decision 2013/448, was contrary to that provision. Consequently, the relevant part of Decision 2013/448 was declared invalid.

Effects of decision

As regards the concrete effects of the decision, the ECJ considered that overriding considerations of legal certainty justified the limitation of the temporal effects of the decision. On one hand, the declaration of invalidity of the correction factor would have serious repercussions on a large number of legal relations established in good faith; on the other hand, it would make it impossible to allocate allowances in the period following issuance of the judgment. Thus, the court decided that the declaration will not enter into effect until 10 months following the issuance date of the judgment, and that measures adopted on the basis of the invalidated provisions cannot be called into question. This temporal limitation is also valid with reference to the parties to the main proceedings.

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Endnotes

(1) Judgment in Joined Cases C-191/14, C192/14, C-295/14, C-389/14, C-391/14 and C-393/14 (April 28 2016).

(2) As well as in the Danish, Dutch, English, German, Polish, Portuguese, Romanian, Slovene, Spanish and Swedish language versions.

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