



ПЪРВОИНСТАНЦИОНЕН СЪД НА ЕВРОПЕЙСКИТЕ ОБЩНОСТИ
TRIBUNAL DE PRIMERA INSTANCIA DE LAS COMUNIDADES EUROPEAS
SOD PRVNÍHO STUPNĚ EVROPSKÝCH SPOLEČENSTVÍ
DE EUROPÆISKE FÆLLESSKABERS RET I FØRSTE INSTANS
GERICHT ERSTER INSTANZ DER EUROPÄISCHEN GEMEINSCHAFTEN
EUROOPA ÜHENDUSTE ESIMESE ASTME KOHUS
ΠΡΩΤΟΔΙΚΕΙΟ ΤΩΝ ΕΥΡΩΠΑΪΚΩΝ ΚΟΙΝΟΤΗΤΩΝ
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SODIŠČE PRVE STOPNJE EVROPSKIH SKUPNOSTI
EUROOPAN YHTEISÖJEN ENSIMMÄISEN OIKEUSASTEEN TUOMIOISTUIN
EUROPEISKA GEMENSKAPERNAS FÖRSTAINSTANSRÄTT

Press and Information

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Judgments of the Court of First Instance in Case T-183/07 and in Case T-263/07

Poland v Commission
Estonia v Commission

THE COURT OF FIRST INSTANCE ANNULS THE COMMISSION DECISIONS CONCERNING THE NATIONAL ALLOCATION PLANS (NAPS) OF POLAND AND ESTONIA FOR GREENHOUSE GAS EMISSION ALLOWANCES

*By imposing, in its review of NAPs, a ceiling on emission allowances to be allocated, the
Commission exceeded its powers*

In order to promote reductions of greenhouse gas emissions in a cost-effective and economically efficient manner, the 2003 Directive¹ establishes a Community scheme for greenhouse gas emission allowance trading within the Community. The Directive provides that, for each five-year period, each Member State is to develop a national allocation plan (NAP) stating the total quantity of allowances that it intends to allocate for that period and how it proposes to allocate them. The plan is to be based on objective and transparent criteria, including the criteria listed in the Directive, taking due account of comments from the public. It is to be published and notified to the Commission and to the other Member States. If the NAP is incompatible with the criteria listed in the Directive, the Commission may reject it or any aspect of it. The Member State is not to decide upon the total quantity of allowances that it is allocating for the period concerned and is not to initiate the process for the allocation of those allowances to the operator of each installation, until proposed amendments are accepted by the Commission.

In 2006 the Republic of Poland and the Republic of Estonia notified the Commission of their NAPs for the period from 2008 to 2012. By two decisions in 2007, the Commission held that those NAPs were incompatible with the criteria in the Directive and decided that the total annual quantities of emission allowances should be reduced, respectively to 26.7%² and 47.8%³ less than those proposed by those two Member States.

¹ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32), as amended by European Parliament and Council Directive 2004/101/EC of 27 October 2004 (OJ 2004 L 338, p. 18)

² From 284.648332 million tonnes of carbon dioxide equivalent (MteCO₂) to 208.515395 MteCO₂ per year.

³ From 24.375045 million tonnes of carbon dioxide equivalent (MteCO₂) to 12.717058 MteCO₂ per year.

Thereafter, Poland, supported by Hungary, Lithuania and Slovakia, and Estonia, supported by Lithuania and Slovakia, brought actions for annulment of the Commission decisions relating to them, the Commission for its part being supported by the United Kingdom.

Misuse of powers

First, the Court of First Instance holds that a Member State alone has the power, first, to draw up the NAP which it notifies to the Commission and whereby it proposes to achieve the aims of the Directive concerning greenhouse gas emissions and, second, to take final decisions fixing the total quantity of allowances which it will allocate for each five-year period and the distribution of that quantity amongst economic operators. The Court states in that regard that Member States have a margin for manoeuvre in deciding the method which they adopt in order to draw up their NAP for allowances.

For its part, the Commission has a power of review in respect of NAPs, a power which is very restricted. Accordingly, the Commission is authorised to verify the conformity of the NAP notified by the Member State with the criteria set out in the Directive and to reject that plan on the grounds of incompatibility with those criteria and provisions, by reasoned decision.

Next, the Court holds in essence that by rejecting the NAP on the basis of reasoning which consists only in the evocation of doubts as to the reliability of the data used by Estonia and Poland, the Commission erred in law.

Furthermore, where the Commission decides to reject the notified NAP, it cannot claim to set aside the data in the NAP in question so as to replace them at the outset by data obtained from its own assessment method. By claiming that, by virtue of the principle of equal treatment, it is for the Commission to select and apply a single method for assessing the NAPs of all the Member States in order to achieve the objective pursued by the Directive, the Commission exceeded the margin for manoeuvre conferred upon it by the Directive.

The Court observes that to allow the Commission to use a single method of assessing NAPs for all the Member States would amount to acknowledging it as having not only a veritable power of uniformisation in the context of implementing the allowance trading system, but also a central role in the drawing up of NAPs. Neither such a power of uniformisation nor such a central role were conferred on the Commission by the legislature, in the context of its power of reviewing NAPs.

Further, it is for each Member State, not the Commission, to decide, on the basis of its NAP drawn up in accordance with the Directive, on the total quantity of allowances it will allocate for the period in question, to initiate the process of allocation of those allowances to the operator of each installation and to rule on allocation of those allowances. Consequently, by imposing in the contested decisions allowance ceilings above which the NAP would be regarded as incompatible with the assessment criteria, the Commission substituted itself, in practice, for the Member States concerned. Therefore, those decisions have the effect of encroaching on the exclusive competence which the Directive confers on the Member States in deciding the total quantity of allowances which they will allocate in respect of each five-year period as from 1 January 2008.

The infringement of the duty to state reasons

The Court, concerning Poland, states that it is the duty of the Commission, in the exercise of its power of review, to explain in what way the instruments used by a Member State in drawing up the NAP are, in its opinion, incompatible with the criteria in the Directive. In that connection, the legislature was concerned to insist on the duty to state reasons which binds the Commission when it adopts a decision rejecting a NAP. In the present case, having regard to the burden of proof incumbent upon it, the Commission has not provided anything in the contested decision

capable of sufficiently explaining in what way the choice of the method of economic analysis and the data used by Poland were contrary to Community law.

The infringement of the principle of sound administration

In its action, Estonia claimed that the Commission was wrong to hold, in the contested decision, that its NAP for allowances was incompatible with the Directive for failure to include, in the total quantity of allowances to be allocated, a ‘reserve’ of allowances, established by it in accordance with the Commission Decision of 2006⁴. In that context, the Court holds that the information contained in the Court’s file does not appear to be reconcilable with the conclusion reached by the Commission in the contested decision, according to which the allowances contained in the reserves in question were not included in the total quantity of allowances to be allocated. The Court holds that the Commission did not properly examine the NAP submitted by Estonia and, consequently, infringed the principle of sound administration.

Accordingly, **the Court of First Instance annuls the Commission decisions concerning the NAPs of the Republics of Poland and Estonia.**

REMINDER: An appeal, limited to points of law only, may be brought before the Court of Justice of the European Communities against a decision of the Court of First Instance, within two months of its notification.

Unofficial document for media use, not binding on the Court of First Instance.

Languages available: BG FR EN ET DE CS ES EL HU IT NI PL RO SK SL

The full text of the judgment may be found on the Court’s internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=T-183/07>

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=T-263/07>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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*Pictures of the delivery of the judgment are available on EbS “Europe by Satellite”,
a service provided by the European Commission, Directorate-General Press and
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⁴ Commission Decision 2006/780/EC of 13 November 2006 on avoiding double counting of greenhouse gas emission reductions under the Community emissions trading scheme for project activities under the Kyoto Protocol pursuant to the Directive (OJ 2006 L 316, p. 12).