



Press and Information

General Court of the European Union
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Judgment in Case T-16/04
Arcelor SA v Parliament and Council

The General Court dismisses the action brought by Arcelor challenging the validity of the Emissions Trading Directive

The action for annulment is dismissed as being inadmissible and the application for damages is dismissed as unfounded

The Emissions Trading Directive¹ was adopted in order to promote reductions of greenhouse gas emissions, in particular CO₂. It is based on the Community's obligations under the United Nations Framework Convention on Climate Change and the Kyoto Protocol.

The directive states that, within the framework of the allowance trading scheme, the operators of installations listed in the annex thereto have to cover their greenhouse gas emissions by means of allowances which are allocated to them by the Member States in accordance with national allocation plans. If an operator succeeds in reducing its emissions, it may sell its surplus allowances to other operators. Conversely, the operator of an installation, the emissions from which exceed its allowances, may purchase the necessary allowances from an operator which has a surplus. The annex to the directive lists the types of installations covered by the directive; these include, in particular, certain combustion installations designed for the production of energy and the production and processing of ferrous metals, such as installations for the production of pig iron or steel.

Arcelor, which since its merger with Mittal in 2006 has become the world's largest steel producer, brought an action before the Court of First Instance (now the General Court) seeking, first, annulment of certain articles of the directive and, second, damages in respect of the harm suffered as a result of the adoption of the directive. Arcelor claims that the application of those provisions to installations for the production of pig iron or steel infringes several principles of Community law, in particular the right of property, the freedom to pursue an economic activity, the principle of proportionality, the principle of equal treatment, freedom of establishment and the principle of legal certainty.

In its judgment delivered today, **the General Court dismisses the action for annulment as inadmissible.**

In that regard, the General Court notes that a legal person, such as a company, may bring an action against Community acts which concern it directly and individually. However, it finds that Arcelor is neither individually nor directly concerned by the directive. The directive applies, in a general and abstract manner, to all of the operators covered by the annex thereto, including those in the pig iron or steel production sector, and is not capable of characterising the factual and legal situation of Arcelor in comparison with those other operators.

Next, **the General Court also rejects Arcelor's application for damages.** In that regard, the General Court finds that Arcelor has not shown that, in adopting the directive, the Community legislature committed a sufficiently serious breach of the right of property, the freedom to pursue

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).

an economic activity, the principle of proportionality, the principle of equal treatment, freedom of establishment or the principle of legal certainty to give rise to non-contractual liability on the part of the Community.

In particular, the General Court points out that the Court of Justice has already held² that the directive does not infringe the principle of equal treatment, since the difference in treatment brought about by the exclusion of the chemicals and non-ferrous metals sectors from the scope of the directive is justified by objective criteria.

In addition, the General Court considers that the fact that the directive does not guarantee operators the possibility of transferring allocated allowances to a more profitable installation in another Member State is not at variance with the principle of the freedom of establishment. The directive grants the Member States a sufficiently broad scope to enable them to apply it in conformity with the freedom of establishment. Accordingly, even if, by not providing for the possibility of transferring allowances freely between installations in different Member States, national legislation is not in conformity with the freedom of establishment, such a restriction cannot be attributed to the directive solely on the ground that the latter does not explicitly prohibit such a practice on the part of Member States.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions, organs or bodies of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution, organ or body concerned must fill any legal vacuum created by the annulment of the act.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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² Judgment of the Court of Justice in Case [C-127/07](#) *Arcelor Atlantique et Lorraine and Others* (see Press Release No [91/08](#)).