



Press and Information

Court of Justice of the European Union

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Judgments in Cases C-504/09 P
Commission v Poland
and C-505/09 P
Commission v Estonia

The Court confirms that the Commission exceeded its powers by imposing on Poland and Estonia a ceiling on greenhouse gas emission allowances

The Commissions' appeals against the judgments of the General Court which annulled those decisions must be dismissed

The 2003 Emissions Trading Directive¹ established a scheme for greenhouse gas emission allowance trading within the Community in order to reduce the effect of those emissions on the climate. The Directive provided that, for each five year period, each Member State was to develop a national allocation plan (NAP) stating the total quantity of allowances that it intended to allocate for that period and how it proposed to allocate them. Such plans had to be based on objective and transparent criteria, including the criteria listed in the Directive, taking due account of comments from the public. They had to be published and notified to the Commission and to the other Member States. If the plan was incompatible with the criteria laid down in the Directive, the Commission could reject the NAP or any aspect thereof. The Member State could decide on the total quantity of allowances it would allocate for the period concerned and initiate the process of allocation of those allowances to the operator of each installation only if the proposed amendments had been accepted by the Commission.

In 2006, Poland and Estonia notified their NAPs to the Commission for the period from 2008 to 2012. By two decisions of 2007, the Commission found those NAPs to be incompatible with a number of the criteria in the Directive and decided that it was necessary to reduce, by 26.7%² and 47.8%³ respectively the total annual quantities of emission allowances compared to the amounts which those two Member States proposed to issue.

Poland, supported by Hungary, Lithuania and Slovakia, and Estonia, supported by Lithuania and Slovakia, then raised actions for annulment against the respective Commission decisions affecting them, with the Commission receiving the support, for its part, of the United Kingdom.

By its judgments of 23 September 2009, the General Court annulled the contested decisions⁴. The General Court held that by adopting those decisions the Commission had exceeded its powers. It also held that the Commission, by its decision addressed to Poland, had failed to comply with the duty to state reasons and, in relation to the Republic of Estonia, the principle of sound administration.

The Commission brought the present appeals before the Court of Justice seeking to have those judgments set aside⁵.

¹ European Parliament and Council Directive 2003/87/EC 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 CO₂ equivalent to 208.515395 million tonnes of CO₂ equivalent.

³ From 24.375045 million tonnes of CO₂ equivalent to 12.717058 million tonnes of CO₂ equivalent.

⁴ Cases [T-183/07](#), *Poland v Commission* and [T-263/07](#), *Estonia v Commission* (see also Press Release No [76/09](#)).

⁵ Pending the Court's judgments in the present cases, the proceedings before the General Court in four other cases concerning the NAP's of the following Member States have been stayed: [T-194/07](#) *Czech Republic v Commission*, [T-221/07](#) *Hungary v Commission*, Joined Cases [T-483/07](#) and [T-484/07](#) *Romania v Commission*.

By its judgments today, the Court rejects the arguments raised by the Commission.

The Court states that the Directive does not lay down a particular method for the drawing up of the NAP or the fixing of the total quantity of greenhouse gas emission allowances to be allocated. Indeed on the contrary, it expressly provides that the Member States must lay down the total quantity of allowances to be allocated taking into account, *inter alia*, the national energy policy and the national climate change programme.

The Member States thus have a certain margin for manoeuvre in transposing Directive 2003/87 and, therefore, in choosing the measures which they consider most appropriate to achieve the objective laid down by that directive.

The Court states that any differences between the choices of the Member States are an expression of their margin for manoeuvre, which the Commission must respect in the context of its conformity review.

The Commission, for its part, may sufficiently ensure equal treatment between the Member States by examining the plan submitted by each of them with the same degree of diligence.

Furthermore, the Court rejects the argument raised by the Commission that, in the interests of procedural economy, it should be given the right to fix the maximum quantity of greenhouse gas emission allowances to be allocated. To hold that the Commission may fix such a maximum quantity would be tantamount to conferring on that institution powers which lacked any legal basis. In that context, it states that the Commission would not exceed its powers where it stated, in the operative part of a decision to reject a national allocation plan, without fixing in a binding manner the maximum quantity of such allowances, that it would not reject amendments to that plan where they were in conformity with the proposals and recommendations made in that rejection decision. Such a procedure would be in conformity with the principle of loyal cooperation between the Member States and the Commission and would also meet the objectives of procedural economy.

The Court also states that the EU legislature, which alone has power to amend the Directive, considered it necessary to amend its provisions⁶. Those amendments provide for the introduction of a more harmonised scheme in order to better exploit the benefits of emission trading, to avoid distortions in the market and to facilitate the linking of the various emissions trading systems.

Finally, since the provisions contested by Poland and Estonia were not severable from the other provisions of the contested decisions, the Court holds that the General Court was right to annul those decisions in their entirety.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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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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⁶ Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community (Text with EEA relevance) (OJ 2009 L 140, p. 63) provides for a new scheme according to which the quantity of allowances issued every year for the whole of the European Union from 2013 is reduced, from the middle of the period 2008 to 2012, by a linear factor of 1.74% compared to the total annual average of allowances issued by the Member States in accordance with the Commission decisions concerning their national allocation plan for allowances for the period 2008 to 2012.