



Press and Information

General Court of the European Union
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Judgment in Case T-370/11
Poland v Commission

The Commission's decision concerning the allocation of free greenhouse gas emission allowances, beginning in 2013, complies with EU law

The decision does not discriminate against industrial installations using coal as fuel

In 2003, in order to reduce greenhouse gas emissions, the EU legislature adopted a Directive¹ establishing a scheme for greenhouse gas emission allowance trading within the EU. Under that Directive, the Commission has to take measures to implement the harmonised free allocation of emission allowances.

Thus, in 2011, the Commission adopted a decision² which, in essence, applies to the allocation of emission allowances free of charge to fixed installations defined in the Directive during trading periods beginning in 2013. The Commission has determined the benchmarks for each sector and sub-sector, based on the average performance of the most efficient installations in those sectors for the years 2007 and 2008. From 2013, the number of allowances allocated free of charge to each installation concerned will be calculated on the basis of those benchmarks.

Taking the view that the Commission's decision infringed both the Treaty on the Functioning of the European Union (TFEU) and the Directive, Poland brought an action before the General Court of the European Union.

In its judgment delivered today, the General Court finds, first, that the decision is a measure implementing the Directive which, in turn, was adopted on the basis of the provisions of the TFEU on **environment policy**. The Court therefore dismisses Poland's action in so far as that Member State challenges the legality of the decision under the TFEU rules on **energy policy**.

The Court notes, secondly, that **the Commission did not breach the principle of equal treatment when it decided to treat uniformly installations that are in different situations, due to the use of different fuels, when determining the benchmarks** to calculate the number of emission allowances to be allocated.

In this regard, the Court finds that distinguishing product benchmarks³ according to the fuel used would not have the effect of encouraging industrial installations using high CO₂ emitting fuel to seek ways to reduce their emissions. Furthermore, such a distinction would involve the risk of increased emissions, since installations using low CO₂ emitting fuel may be induced to replace it with a higher CO₂ emitting fuel. Similarly, the Court finds that the choice of natural gas, a low CO₂

¹ Directive 2003/87/EC of the European Parliament and of the Council Directive 2003/87/CE 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 Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 (OJ 2009 L 140, p. 63).

² Commission Decision 2011/278/EU determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament of the Council (OJ 2011 L 130, p. 1).

³ The product benchmarks define the maximum amount of allowances that can be allocated per unit of production of a given product.

emitting fuel, to determine the heat and fuel⁴ benchmarks, is intended to reduce emissions of greenhouse gases.

The Court finds, thirdly, that the contested decision gives appropriate consideration to the economic and social consequences of the measures to reduce CO₂ emissions. On the one hand, the operating rules will be introduced gradually from 2013. Installations with high CO₂ emissions, such as those using coal in Poland, which need a large number of allowances for production will, therefore, initially obtain a greater quantity of free allowances to meet their needs. On the other hand, the EU legislature has established mechanisms to support the efforts of Member States, with relatively low income per capita and relatively high growth prospects, to reduce the carbon intensity of their economies by 2020.

Finally, the Court notes that, from 2013, auctioning will be the basic principle for the system of allocating emission allowances. Thus, Member States will be able to auction all allowances which are not allocated free of charge, so that installations can buy missing allowances. Moreover, this system will comply with the 'polluter pays' principle in so far as installations emitting more CO₂ will be obliged to pay the price of allowances purchased at auction or to reduce their emissions.

Therefore, the Court rejects Poland's argument that the contested decision would decrease the competitiveness of companies in Member States whose production is linked mainly to coal as a fuel. In this regard, the Court states that the Directive, while taking into account the different situations in the various regions of the EU, leaves the Member States a margin of manoeuvre to adopt financial measures in favour of sectors and sub-sectors that have a significant risk of carbon leakage⁵, due to the costs of greenhouse gas emissions, and to provide for the allocation of free allowances to installations in those sectors and sub-sectors.

In those circumstances, **the Court dismisses in its entirety the action brought by Poland against the Commission.**

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 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 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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⁴ Different benchmarks are applied to production processes that are not covered by a product benchmark: the heat benchmark (heat produced or consumed) or, if the heat cannot be measured, the fuel benchmark (input energy of the fuel used).

⁵ This is the relocation of business activities of the European Union, in sectors exposed to strong international competition, to third countries where greenhouse gas emission requirements are less stringent.