



Press and Information

Court of Justice of the European Union  
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Judgment in Case C-43/14  
ŠKO-ENERGO s.r.o. v Odvolací finanční ředitelství

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**EU law precludes a Czech tax on the acquisition free of charge of greenhouse gas emission allowances by electricity producers to the extent that the tax applies to more than 10% of those allowances**

The Emissions Trading Directive<sup>1</sup> provides that for the period 2008-2012 the Member States were to allocate at least 90% of allowances free of charge.

In 2011 and 2012 Czech legislation imposed a gift tax, at the rate of 32%, on electricity producers' acquisition of free-of-charge allowances. The revenue from that tax was intended to support operators of photovoltaic power stations.

In an action before the Czech courts, ŠKO-ENERGO, a Czech electricity producer liable to that tax, is disputing the compatibility of the tax with the directive. The Nejvyšší správní soud (Supreme Administrative Court of the Czech Republic), hearing an appeal in the case, has asked the Court of Justice whether such a tax is permitted by the directive.

In today's judgment the Court observes that, in the light of the 10% ceiling on the allocation of allowances for consideration, the directive precludes not only the direct fixing of a price for the allocation of emission allowances but also the subsequent levying of a charge in respect of their allocation. Consequently, **the tax at issue**, levied following the allocation of the allowances, **is incompatible with the directive** to the extent that it does not respect that ceiling; that is a matter for the national court to determine.

The Court also finds that the application of that tax cannot be justified by the aim of generating additional revenue for certain producers of green energy. That is not one of the aims of the directive.

Moreover, the directive's aim of protecting certain production sectors from a sudden loss of competitiveness owing to the introduction of a market for allowances implies that the 10% ceiling on the number of allowances that may be allocated for consideration should **be assessed from the point of view of the operators in each of the sectors concerned** and not by reference to the total allowances issued by the Member State.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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*Unofficial document for media use, not binding on the Court of Justice.*

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

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<sup>1</sup> 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).

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