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Judgment of the Court of Justice in Case C-127/07

Société Arcelor Atlantique et Lorraine and Others v. Premier ministre, Ministre de l'Écologie et du Développement durable, Ministre de l'Économie, des Finances et de l'Industrie

THE DIRECTIVE ESTABLISHING A COMMUNITY SCHEME FOR GREENHOUSE GAS EMISSION ALLOWANCE TRADING DOES NOT BREACH THE PRINCIPLE OF EQUAL TREATMENT

The difference in treatment caused by the exclusion of the chemical and non-ferrous metal sectors from the scope of the directive may be regarded as justified

On 13 October 2003 the Community legislature adopted a directive¹ establishing a scheme for greenhouse gas emission allowance trading within the Community, in compliance with the overall commitment entered into by the European Community and its Member States under the Kyoto Protocol, with the aim of reducing total emissions of six greenhouse gases, including carbon dioxide (CO₂), by at least 5% of the level of emissions in 1990, during the period 2008 to 2012.

Arcelor Atlantique et Lorraine and Others brought an action before the Conseil d'État (France) for annulment of the Decree of 15 April 2004 which transposed the directive. They argued, in support of their application, inter alia that there had been a breach of the constitutional principle of equal treatment, in that the directive produces a difference in treatment between installations in the steel sector, which are subject to the greenhouse gas emission allowance trading scheme, and the aluminium and plastics industries, which, although likewise emitting greenhouse gases, are not subject to the scheme.

Since it considers that the steel, plastics and aluminium sectors are in a comparable situation, the Conseil d'État has put a question to the Court of Justice on whether the Community legislature breached the principle of equal treatment by treating comparable situations differently without justification.

The Court recalls that the general principle of equal treatment, as a general principle of Community law, requires that comparable situations must not be treated differently and different situations must not be treated in the same way unless such treatment is objectively justified.

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).

For the purpose of assessing the validity of the directive from the point of view of the principle of equal treatment, the Court starts by examining whether those various industrial activities are in a comparable situation, having regard to the subject-matter and objectives of the directive and the principles on which Community policy on the environment is based.

The Court finds that the different sources of greenhouse gas emissions relating to economic activities are in principle in a comparable situation, since all emissions of greenhouse gases are liable to contribute to dangerous interference with the climate system and all sectors of the economy which emit such gases can contribute to the functioning of the allowance trading scheme.

The chemical and non-ferrous metal sectors, to which the plastics and aluminium sectors respectively belong, and the steel sector are therefore in a comparable position while being treated differently.

The Court points out that the subjection of certain sectors to the Community allowance trading scheme involves, for the undertakings concerned, first, an obligation to apply to the competent national authorities for a permit to emit greenhouse gases and, second, an obligation to surrender allowances equal to the total emissions from their installations during a specified period, on pain of financial penalties.

Consequently, the inclusion of an economic activity in the scope of the directive creates a disadvantage compared to operators carrying on activities not so included. Even if being subject to such a scheme does not systematically entail unfavourable economic consequences, the existence of a disadvantage cannot be denied.

Finally, the Court ascertains whether the different treatment of the steel sector on the one hand and the chemical and non-ferrous metal sectors on the other is nevertheless objectively justified.

The Court has acknowledged that in the exercise of the powers conferred on it the Community legislature has a broad discretion where its action involves political, economic and social choices and where it is called on to undertake complex assessments and evaluations. However, it is obliged to base its choice on objective criteria appropriate to the aim pursued by the legislation in question, taking into account all the facts and the technical and scientific data available at the time when the act is adopted.

When exercising its discretion the Community legislature must, in addition to the principal objective of protecting the environment, fully take into account all the interests involved.

In the present case, in view of the novelty and complexity of the scheme set up by the directive, the Community legislature could lawfully make use of a step-by-step approach for the introduction of the allowance trading scheme, and make provision for reviewing at reasonable intervals the measures adopted, in particular by gradually extending the scope of the directive.

While the Community legislature has such a discretion as regards a step-by-step approach, that cannot dispense it from having recourse, for determining the sectors it thinks suitable for inclusion in the scope of the directive from the outset, to objective criteria based on the technical and scientific information available at the time of adoption of the directive.

The legislature could lawfully define the scope of the directive by excluding the chemical sector, which has an especially large number of installations, of the order of 34 000, whose inclusion would have made the management of the allowance trading scheme more difficult and increased the administrative burden, which could have endangered the functioning of the scheme when it was established.

In addition, the difference in the levels of direct emissions – those of the non-ferrous metal sector amounted to 16.2 million tonnes of CO₂ in 1990 while those of the steel sector were 174.8 million tonnes – is so substantial that the different treatment of those sectors may be regarded as justified.

It follows that the **exclusion from the scope of the directive, in the first stage of its implementation, of the chemical and non-ferrous metal sectors may be regarded as justified.**

Accordingly, consideration of the question put by the Conseil d'État has not disclosed anything to affect the validity of the directive.

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

Languages available: DE EN ES FR PL SK

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=C-127/07>

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",
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