



## PRESS RELEASE No 52/26

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Judgment of the Court in Case C-519/24 | Nitrogénművek

### **A national law which neutralises the compensatory effect of CO<sub>2</sub> emission allowances allocated free of charge is contrary to the objectives of the directive on the system of emission allowance trading**

*The Hungarian tax on CO<sub>2</sub> emission allowances appears to be contrary to EU law, which it is for the national court to verify*

In 2023, in the context of the state of emergency declared by the Hungarian authorities as a result of the war in Ukraine, Hungary imposed a tax on CO<sub>2</sub> emission allowances<sup>1</sup> on operators receiving significant greenhouse gas emission allowances free of charge.<sup>2</sup>

The principal objective of the directive on the system of emission allowance trading<sup>3</sup> is to reduce greenhouse gas emissions substantially while ensuring the preservation of the integrity of the internal market and of conditions of competition. The free allocation of emission allowances is aimed at preventing EU industries from losing competitiveness and 'carbon leakage'.<sup>4</sup> The directive promotes the reduction of emissions by relying on the economic value of the allowances to encourage companies to reduce their emissions. To that end, it introduces the EU ETS,<sup>5</sup> which allows undertakings to use or sell their allowances based on market prices.

Nitrogénművek, a Hungarian private limited company operating in the fertiliser production sector, is challenging the compatibility of that tax with EU legislation before the Hungarian courts. Hearing the dispute, the Veszprém High Court (Hungary) asks the Court of Justice whether the directive precludes such a tax.

In its judgment, the Court holds that **the directive precludes such a tax where it neutralises the compensatory effect of allocating free allowances and runs counter to the objectives of preserving competitiveness and preventing carbon leakage**, which it is for the referring court to verify.

It recalls that, in order to minimise distortions of competition, the rules on the free allocation of allowances are fully harmonised at EU level on a sectorial basis. Member States may adopt **measures of a fiscal nature** liable to have an impact on the economic implications of allowances, provided that they do not undermine the objectives of the directive. In order to ensure the proper functioning of the EU ETS, such a national measure **may not diminish the incentive to reduce greenhouse gas emissions** to the point of eliminating it entirely.

**However, a tax on free allowances deprives operators of the incentive to invest in measures to reduce their emissions at the level of the amount of tax due.** Such a tax also **strips emission allowances of a substantial part of their economic value and neutralises the incentive mechanisms** on which the system for trading those allowances is based. It thus eliminates the incentives aimed at promoting the reduction of greenhouse gas emissions.

**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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The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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<sup>1</sup> The tax amounts to € 36 per tonne of annual emissions produced by the operator.

<sup>2</sup> The tax is applied to operators who satisfy two cumulative conditions: their average annual verified CO<sub>2</sub> emissions exceeded 25 000 tonnes in the three years preceding the reference year and they received, in the year preceding the reference year, a free allocation of emission allowances equivalent to at least 50% of the average of their total verified emissions produced in the three years preceding the reference year.

<sup>3</sup> [Directive 2003/87/EC](#) of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, as amended by Directive (EU) 2018/410 of the European Parliament and of the Council of 14 March 2018, amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments, and Decision (EU) 2015/1814.

<sup>4</sup> That is to say, the phenomenon of the relocation of production.

<sup>5</sup> Community system for greenhouse gas emission allowance trading.