

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul Article 1(1) of the Commission Decision of 5 September 2013 concerning national implementation measures for the transitional free allocation of greenhouse gas emission allowances in accordance with Article 11(3) of Directive 2003/87/EC ⁽¹⁾ of the European Parliament and of the Council (C(2013) 5666, 2013/448/EU, OJ 2013 L 240, p. 27), in so far as it rejects inclusion of the installations with installation identifiers DE0000000000001320 and DE-new-14220-0045, presented by Germany to the Commission within the meaning of Article 11(1) of Directive 2003/87/EC, falling within the scope of Directive 2003/87/EC and the corresponding preliminary annual amounts of emission allowances, which should be allocated to those installations free of charge;

- order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies in essence on the following pleas in law:

- The contested decision, in so far as it is challenged by the applicant, infringes Directive 2003/87/EC and Decision 2011/278/EU ⁽²⁾. Furthermore, the decision is incompatible with the principle of proportionality and the Charter of Fundamental Rights of the European Union. It is also not properly justified.
- In so far as the rejection of the free allocation of allowances for the applicant's installations is based on the fact that Germany allocated it an additional transitional free allowances as compensation for excessive hardship, the applicant claims that, contrary to the Commission's opinion, that allocation is not contrary to Decision 2011/278. In any event, a special allocation for hardship cases is required as compensation for excessive burdens as a result of the trade in emissions guaranteed by the Charter of Fundamental Rights of the European Union, in particular the fundamental rights of freedom of undertakings and freedom to choose property, as well as the principle of proportionality.
- In so far as the rejection of the free allocation of allowances for the applicant's installations is based on the fact that Germany granted it an additional transitional free allowances for the manufacture of zinc concentrate in the applicant's blast furnaces on the basis of a process emissions sub-installation, the applicant claims that the contested

decision is incompatible with Decision 2011/278 and that the grounds for the decision are contradictory and insufficient.

- Finally, the applicant complains of an infringement of the requirement of good administrative practice under Article 41 of the Charter of Fundamental Rights of the European Union. Ahead of the decision, the applicant was not given any opportunity to submit its opinion.

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- ⁽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).
 - ⁽²⁾ 2011/278/EU: Commission Decision of 27 April 2011 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 and of the Council (notified under document C(2011) 2772 (OJ 2011 L 130, p. 1).

Action brought on 29 November 2013 — Raffinerie Heide v Commission

(Case T-631/13)

(2014/C 31/28)

Language of the case: German

Parties

Applicant: Raffinerie Heide GmbH (Hemmingstedt, Germany) (represented by: U. Karpenstein, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul Commission Decision of 5 September 2013 concerning national implementation measures for the transitional free allocation of greenhouse gas emission allowances in accordance with Article 11(3) of Directive 2003/87/EC ⁽¹⁾ of the European Parliament and of the Council (2013/448/EU, OJ 2013 L 240, p. 27), in so far as Article 1(1) and Annex IA rejected inclusion of the applicant in the list under Article 11 of Directive 2003/87/EC and the preliminary total annual amounts of emission allowances which should be allocated to the applicant under identifier DE000000000000010 free of charge;
- order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on two pleas in law.

1. First plea in law, alleging failure to exercise discretion

In this context the applicant claims that the Union's greenhouse gas emission allowance trading scheme for the third trading period (2013 to 2020) does not exclude allocations in particular cases of hardship and does not release the Commission, in its decisions, from having regard to the fundamental rights of undertakings and the principle of proportionality. The Commission has overlooked this and thereby did not properly exercise its discretion which Union law has granted it.

2. Second plea in law, alleging infringement of the applicant's fundamental rights

The applicant submits in that regard that the rejection by the national competent authority of the requested allocations infringes the applicant's fundamental rights under Articles 17 and 16 of the Charter of Fundamental Rights of the European Union as well as the principle of proportionality. The expected under-supply of allowances to the applicant would cause it clear disproportionate hardship unforeseen by Directive 2003/87/EC. The creation of a situation likely to endanger the existence of undertakings, such as the applicant, is not appropriate, necessary or proportionate to meet the objectives set out in the directive.

⁽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).

Action brought on 29 November 2013 — Arctic Paper Mochenwangen v Commission

(Case T-634/13)

(2014/C 31/29)

Language of the case: German

Parties

Applicant: Arctic Paper Mochenwangen GmbH (Wolpertswende, Germany) (represented by: S. Kobes, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

- annul Article 1(1) of Decision 2013/448/EU of the defendant of 5 September 2013 concerning national implementation measures for the transitional free allocation of greenhouse gas emission allowances in accordance with Article 11(3) of Directive 2003/87/EC ⁽¹⁾ of the European Parliament and of the Council (C(2013) 5666, OJ 2013 L 240, p. 27), in so far as it rejects the inscription of the installation listed in Annex I, Point A with the installation identification code DE000000000000563 on the list of installations covered by Directive 2003/87/EC submitted by Germany to the Commission pursuant to Article 11(1) of Directive 2003/87/EC and the corresponding preliminary annual amounts of emission allowances allocated free of charge to these installations;
- order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies in essence on the following pleas in law:

- The contested decision infringes Directive 2003/87/EC and Decision 2011/278/EU ⁽²⁾ in so far as it is contested by the applicant. The decision is also incompatible with the principle of proportionality and the Charter of Fundamental Rights of the European Union.
- The Decision 2011/278/EU does not preclude an additional preliminary allocation of free allowances as compensation for a case of hardship. In any event, the guarantees of the Charter of Fundamental Rights of the European Union, particularly the fundamental rights to conduct a business and to property, as well as the principle of proportionality require a specific allocation in cases of hardship as compensation for undue burdens resulting from emissions trading.
- Finally, the applicant alleges infringement of the requirements of a fair administrative practice pursuant to Article 41 of the Charter of Fundamental Rights of the European Union. Prior to the decision, the applicant was not given any opportunity to express an opinion.

⁽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).

⁽²⁾ 2011/278/EU: Commission Decision of 27 April 2011 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 and of the Council (notified under document C(2011) 2772) (OJ 2011 L 130, p. 1).