

**Request for a preliminary ruling from the Sąd Okręgowy w Częstochowie (Poland) lodged on 20 January 2014 — Ryszard Pańczyk v Dyrektor Zakładu Emerytalno-Rentowego Ministerstwa Spraw Wewnętrznych i Administracji w Warszawie**

**(Case C-28/14)**

(2014/C 303/04)

*Language of the case: Polish*

**Referring court**

Sąd Okręgowy w Częstochowie

**Parties to the main proceedings**

*Applicant:* Ryszard Pańczyk

*Defendant:* Dyrektor Zakładu Emerytalno-Rentowego Ministerstwa Spraw Wewnętrznych i Administracji w Warszawie

By order of 12 June 2014, the Court of Justice held that it manifestly lacks jurisdiction to reply to the questions submitted by the Sąd Okręgowy w Częstochowie.

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**Appeal brought on 20 February 2014 by Brown Brothers Harriman & Co. against the order of the General Court (Ninth Chamber) delivered on 9 December 2013 in Case T-389/13: Brown Brothers Harriman & Co. v Office for Harmonisation in the Internal Market (Trade Marks and Designs)**

**(Case C-101/14 P)**

(2014/C 303/05)

*Language of the case: English*

**Parties**

*Appellant:* Brown Brothers Harriman & Co. (represented by: P. Leander, T. Kronhöffer, advocates)

*Other party:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)

By order of 17 July 2014 the Court of Justice (Third Chamber) held that the appeal was inadmissible.

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**Request for a preliminary ruling from the Landesverwaltungsgericht Niederösterreich (Austria) lodged on 17 April 2014 — Borealis Polyolefine GmbH v Bundesminister für Land-, Forst-, Umwelt und Wasserwirtschaft**

**(Case C-191/14)**

(2014/C 303/06)

*Language of the case: German*

**Referring court**

Landesverwaltungsgericht Niederösterreich

**Parties to the main proceedings**

*Appellant:* Borealis Polyolefine GmbH

*Respondent authority:* Bundesminister für Land-, Forst-, Umwelt und Wasserwirtschaft

**Questions referred**

1. Is Decision 2013/448/EU<sup>(1)</sup> invalid and does it infringe Article 10a(5) of Directive 2003/87/EC<sup>(2)</sup> in so far as it excludes from the basis of calculation pursuant to subparagraphs (a) and (b) of Article 10a(5) of that directive emissions associated with waste gases produced by installations falling within Annex I to Directive 2003/87/EC and heat used by installations falling within Annex I to Directive 2003/87/EC and which comes from combined heat and power installations, for which a free allocation is granted pursuant to Article 10a(1) and 10a(4) of Directive 2003/87/EC and Decision 2011/278/EU? <sup>(3)</sup>
2. Is Decision 2013/448/EU invalid and does it infringe Article 3e and 3u of Directive 2003/87/EC, alone and/or in conjunction with Article 10a(5) of Directive 2003/87/EC, in so far as it provides that CO<sub>2</sub> emissions associated with waste gases — which are produced by installations falling within Annex I to Directive 2003/87/EC — and heat used in installations falling within Annex I to Directive 2003/87/EC and which was acquired by combined heat and power installations are emissions from ‘electricity generators’?
3. Is Decision 2013/448/EU invalid and does it infringe the objectives of Directive 2003/87/EC in so far as it creates an asymmetry by excluding emissions associated with the combustion of waste gases and with heat produced in cogeneration from the basis of calculation in subparagraphs (a) and (b) of Article 10a(5), whereas free allocation with regard to them is due in accordance with Article 10a(1) and 10a(4) of Directive 2003/87/EC and Decision 2011/278/EU?
4. Is Decision 2011/278/EU invalid and does it infringe Article 290 TFEU and Article 10a(5) of Directive 2003/87/EC in so far as Article 15(3) of that decision amends subparagraphs (a) and (b) of Article 10a(5) of Directive 2003/87/EC to the effect that it replaces the reference to ‘installations which are not covered by paragraph 3’ by the reference to ‘installations that are not electricity generators’?
5. Is Decision 2013/448/EU invalid and does it infringe Article 23(3) of Directive 2003/87/EC in so far as that decision was not adopted on the basis of the regulatory procedure with scrutiny which is laid down in Article 5a of Council Decision 1999/468/EC and Article 12 of Regulation (EU) No 182/2011?
6. Is Article 17 of the European Charter of Fundamental Rights to be understood as precluding the retention of free allocations on the basis of the wrongful calculation of a cross-sectoral correction factor?
7. Is Article 10a(5) of Directive 2003/87/EC, on its own and/or in conjunction with Article 15(3) of Decision 2011/278/EU, to be understood as precluding the application of a provision of national law which provides for the application of the wrongfully calculated uniform cross-sectoral correction factor, as determined in Article 4 of Decision 2013/448/EU and in Annex II thereto, to the free allocations in a Member State?
8. Is Decision 2013/448/EU invalid and does it infringe Article 10a(5) of Directive 2003/87/EC in so far as it includes only emissions from installations which were contained in the Community scheme from 2008, with the result that it excludes those emissions which are associated with activities which were contained in the Community scheme from 2008 (in the amended Annex I to Directive 2003/87/EC) if those activities took place in installations which were already contained in the Community scheme prior to 2008?

9. Is Decision 2013/448/EU invalid and does it infringe Article 10a(5) of Directive 2003/87/EC in so far as it includes only emissions from installations which were contained in the Community scheme from 2013, with the result that it excludes those emissions which are associated with activities which were contained in the Community scheme from 2013 (in the amended Annex I to Directive 2003/87/EC) if those activities took place in installations which were already contained in the Community scheme prior to 2013?

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- (<sup>1</sup>) 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 of the European Parliament and of the Council (OJ 2013 L 240, p. 27).
- (<sup>2</sup>) Directive 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).
- (<sup>3</sup>) 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 (OJ 2011 L 130, p. 1).

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**Request for a preliminary ruling from the Landesverwaltungsgericht Niederösterreich (Austria)  
lodged on 17 April 2014 — OMV Refining & Marketing GmbH v Bundesminister für Land-, Forst-,  
Umwelt und Wasserwirtschaft**

**(Case C-192/14)**

(2014/C 303/07)

*Language of the case: German*

**Referring court**

Landesverwaltungsgericht Niederösterreich

**Parties to the main proceedings**

*Appellant:* OMV Refining & Marketing GmbH

*Respondent authority:* Bundesminister für Land-, Forst-, Umwelt und Wasserwirtschaft

**Questions referred**

1. Is Decision 2013/448/EU (<sup>1</sup>) invalid and does it infringe Article 10a(5) of Directive 2003/87/EC (<sup>2</sup>) in so far as it excludes from the basis of calculation pursuant to subparagraphs (a) and (b) of Article 10a(5) of that directive emissions associated with waste gases produced by installations falling within Annex I to Directive 2003/87/EC and heat used by installations falling within Annex I to Directive 2003/87/EC and which comes from combined heat and power installations, for which a free allocation is granted pursuant to Article 10a(1) and 10a(4) of Directive 2003/87/EC and Decision 2011/278/EU? (<sup>3</sup>)
2. Is Decision 2013/448/EU invalid and does it infringe Article 3e and 3u of Directive 2003/87/EC, alone and/or in conjunction with Article 10a(5) of Directive 2003/87/EC, in so far as it provides that CO<sub>2</sub> emissions associated with waste gases — which are produced by installations falling within Annex I to Directive 2003/87/EC — and heat used in installations falling within Annex I to Directive 2003/87/EC and which was acquired by combined heat and power installations are emissions from ‘electricity generators’?
3. Is Decision 2013/448/EU invalid and does it infringe the objectives of Directive 2003/87/EC in so far as it creates an asymmetry by excluding emissions associated with the combustion of waste gases and with heat produced in cogeneration from the basis of calculation in subparagraphs (a) and (b) of Article 10a(5), whereas free allocation with regard to them is due in accordance with Article 10a(1) and 10a(4) of Directive 2003/87/EC and Decision 2011/278/EU?