

Parties to the main proceedings

Applicant: Groupe Steria SCA

Defendant: Ministry of Finance and Public Accounts

Question referred

Must Article 43 EC (now Article 49 TFEU) on freedom of establishment be interpreted as precluding the rules governing the French tax-integration regime from granting a tax-integrated parent company neutralisation as regards the add-back of the proportion of costs and expenses, fixed at 5 % of the net amount of the dividends received by it from tax-integrated resident companies only, when such a right is refused to it under those rules as regards the dividends distributed to it from its subsidiaries established in another Member State, which had they been resident would have been eligible in practice, if they so elected?

Request for a preliminary ruling from the Finanzgericht Köln (Germany) lodged on 14 August 2014 — Timac Agro Deutschland GmbH v Finanzamt Sankt Augustin

(Case C-388/14)

(2014/C 372/08)

Language of the case: German

Referring court

Finanzgericht Köln

Parties to the main proceedings

Applicant: Timac Agro Deutschland GmbH

Defendant: Finanzamt Sankt Augustin

Questions referred

1. Is Article 49 TFEU (Article 43 EC) to be interpreted as precluding a provision such as Article 52(3) of the Einkommensteuergesetz (Law on income tax, 'EStG'), in so far as the cause of the reinstatement of an amount corresponding to losses of a foreign permanent establishment previously taken into account by way of a tax reduction is the sale of that permanent establishment to another company limited by shares within the same group as the seller, and not the making of profits?
2. Is Article 49 TFEU (Article 43 EC) to be understood as precluding a provision such as Article 23(1)(a) of the DBA Deutschland/Österreich 2000 (2000 Double taxation convention between Germany and Austria) — according to which income from Austria is to be exempt from the basis of assessment for German taxation if that income can be taxed in Austria — if losses accrued in an Austrian permanent establishment of a German company limited by shares can no longer be taken into account in Austria because the permanent establishment is sold to an Austrian company limited by shares belonging to the same group as the German company?

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 18 August 2014 — Esso Italiana srl and Others v Comitato nazionale per la gestione della Direttiva 2003/87/CE and Others

(Case C-389/14)

(2014/C 372/09)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicants: Esso Italiana srl, Eni SpA, Linde Gas Italia srl

Defendants: Comitato nazionale per la gestione della Direttiva 2003/87/CE e per il supporto nella gestione delle attività di progetto del Protocollo di Kyoto, Ministero dell'Ambiente e della Tutela del Territorio e del Mare, Ministero dell'Economia e delle Finanze, Presidenza del Consiglio dei Ministri

Questions referred

- 1) Is European Commission Decision 2013/448/EU ⁽¹⁾ of 5 September 2013 invalid for not having taken into account, in the calculation of the allowances to be allocated free of charge, the percentage of emissions associated with waste gas combustion — or steel processing gas — or of emissions associated with the heat produced by cogeneration, thereby infringing Article 290 TFEU and Article 10a(1),(4) and (5) of Directive 2003/87/EC ⁽²⁾, going beyond the limits of the powers conferred by that directive and at variance with its objectives (to encourage more energy-efficient techniques and to protect the needs of economic development and employment)?
- 2) Is European Commission Decision 2013/448/EU of 5 September 2013 invalid, in the light of Article 6 TEU, on grounds of its inconsistency with Article 1 of the Additional Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms ('the ECHR') and Article 17 of the ECHR, owing to undue failure to respect the applicant companies' legitimate expectation of remaining in possession of a good consisting of the number of the allowances allocated to them on a preliminary basis and to which they are entitled on the basis of Directive 2003/87, thereby depriving those companies of the economic benefit associated with that good?
- 3) Furthermore, is European Commission Decision 2013/448/EU of 5 September 2013 invalid as regards its definition of the cross-sectoral correction factor, given that the decision infringes the second paragraph of Article 296 TFEU and Article 41 of the Charter of Fundamental Rights of the European Union owing to its failure to provide an adequate statement of reasons?
- 4) Is European Commission Decision 2013/448/EU of 5 September 2013 invalid as regards its definition of the cross-sectoral correction factor, given that the decision infringes Article 10a(5) of Directive 2003/87/EC, fails to respect the principle of proportionality enshrined in Article 5(4) TEU and is also vitiated by failure to carry out a proper inquiry and error of assessment, in the light of the fact that the calculation of the maximum number of allowances to be allocated free of charge (relevant for the purposes of defining a uniform cross-sectoral correction factor) did not take into account the effects of the changes in the interpretation of the term 'combustion plant' between the first phase (2005-2007) and the second phase (2008-2012) of the implementation of Directive 2003/87/EC?
- 5) Is European Commission Decision 2013/448/EU of 5 September 2013 invalid as regards its definition of the cross-sectoral correction factor, on grounds of infringement of Articles 10a(5) and 9a(2) of Directive 2003/87/EC, and also on account of the failure to carry out a proper inquiry and error of assessment, in view of the fact that the calculation of the maximum number of allowances to be allocated free of charge (relevant for the purposes of defining a uniform cross-sectoral correction factor) was made on the basis of data, provided by the Member States, which are mutually inconsistent because based on different interpretations of Article 9a(2) of Directive 2003/87/EC?
- 6) Is European Commission decision 2013/448/EU of 5 September 2013 invalid as regards its definition of the cross-sectoral correction factor, on grounds of infringement of the procedural rules under Articles 10a(1) and 23(3) of Directive 2003/87/EC?

⁽¹⁾ 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).

⁽²⁾ 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).