Request for a preliminary ruling from the Verwaltungsgericht Berlin (Germany) lodged on 24 December 2019 — Energieversorgungscenter Dresden-Wilschdorf GmbH & Co. KG v Federal Republic of Germany

(Case C-938/19)

(2020/C 103/18)

Language of the case: German

Referring court

Verwaltungsgericht Berlin

Parties to the main proceedings

Applicant: Energieversorgungscenter Dresden-Wilschdorf GmbH & Co. KG

Defendant: Federal Republic of Germany

Questions referred

1. Is Article 2(1) of Directive 2003/87/EC ([1]) to be interpreted as meaning that a provision such as that in the first sentence of Paragraph 2(4) of the Treibhausgas-Emissionshandelsgesetz (Law on greenhouse gas emissions trading) (TEHG 2011), pursuant to which an installation authorised under the Bundesimmissionsschutzgesetz (Federal Law on emission control) is also subject to compulsory emissions trading to the extent that the authorisation also covers ancillary facilities that do not emit greenhouse gases, is compatible with that provision of the directive?

2. If the first question is answered in the affirmative:

   Does it follow from the rules for calculating the corrected eligibility ratio for heat imported from installations not subject to compulsory emissions trading, which are provided for in the template drawn up by the European Commission and are prescribed for the Member States, that that ratio is applicable to the total amount of heat produced in the installation subject to compulsory emissions trading even if the imported heat can be clearly attributed to one of several identifiable and separately recorded heat flows and/or heat consumptions inside the installation?

3. Is the third subparagraph of Article 6(1) of Commission Decision 2011/278/EU ([2]) to be interpreted as meaning that the relevant process of the heat benchmark sub-installation for this heat serves a sector or subsector deemed to be exposed to a significant risk of carbon leakage as determined by Commission Decision 2010/2/EU ([3]) where that heat is used to produce cooling and the cooling is consumed by an installation not subject to compulsory emissions trading in a sector or subsector which is exposed to a significant risk of carbon leakage?

   Is it relevant for the applicability of the third subparagraph of Article 6(1) of Commission Decision 2011/278/EU whether the production of cooling takes place within the boundaries of the installation subject to compulsory emissions trading?

([1]) 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).

([2]) 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).

([3]) Commission Decision of 24 December 2009 determining, pursuant to Directive 2003/87/EC of the European Parliament and of the Council (OJ 2010 L 1, p. 10), a list of sectors and subsectors which are deemed to be exposed to a significant risk of carbon leakage, repealed by Commission Decision 2014/746/EU (OJ 2014 L 308, p. 114).