



## Reports of Cases

### Joined Cases C-566/11, C-567/11, C-580/11, C-591/11, C-620/11 and C-640/11 Iberdrola SA and Others

(Requests for a preliminary ruling from the Tribunal Supremo)

(Reference for a preliminary ruling — Protection of the ozone layer — Scheme for greenhouse gas emission allowance trading within the Community — Method of allocating allowances — Allocation of allowances free of charge)

Summary — Judgment of the Court (Fifth Chamber), 17 October 2013

1. *Environment — Atmospheric pollution — Directive 2003/87 — Scheme for greenhouse gas emission allowance trading — Method of allocating allowances — Allocation of allowances free of charge — Principle — Scope — Electricity producers having incorporated the value of the emission allowances allocated free of charge in the selling price of electricity — National measure reducing remuneration for electricity production by an amount equal to the increase in such remuneration brought about through that practice — Lawfulness*

*(European Parliament and Council Directives 2003/87, Art. 10 and 2009/29, recitals 15 and 19)*

2. *Environment — Atmospheric pollution — Directive 2003/87 — Aim — Reduction of greenhouse gas emissions — Compliance with sub-objectives and instruments defined by the Directive*

*(European Parliament and Council Directive 2003/87, recitals 5 and 7)*

1. Article 10 of Directive 2003/87 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Directive 96/61 must be interpreted as not precluding application of national legislative measures the purpose and effect of which are to reduce remuneration for electricity production by an amount equal to the increase in such remuneration brought about through the incorporation, in the selling prices offered on the wholesale electricity market, of the value of the emission allowances allocated free of charge.

Member States may, as a rule, adopt economic policy measures, such as a price control on the markets for certain goods or essential resources, determining the manner in which the value of the emission allowances allocated free of charge to producers is to be passed on to consumers provided that the adoption of such measures does not neutralise the principle that emission allowances are allocated free of charge, or undermine the objectives pursued by Directive 2003/87.

As regards the principle that emission allowances are allocated free of charge, the concept of free under Article 10 of Directive 2003/87 precludes not only the direct fixing of a price for the allocation of emission allowances but also the subsequent levying of a charge in respect of their allocation.

However, the allocation of emission allowances free of charge was not intended as a way of granting subsidies to the producers concerned, but of reducing the economic impact of the immediate and unilateral introduction by the EU of an emission allowances market, by preventing a loss of

competitiveness in certain production sectors covered by that directive. The mechanism for the allocation of emission allowances free of charge does not require electricity producers to be able to pass on the value of those allowances in electricity prices and thus make windfall profits.

As regards the objective of Directive 2003/87 not being undermined, by counterbalancing the windfall profits accrued as a result of the allocation of allowances free of charge, a national rule does not undermine the purpose of the system established by Directive 2003/87 for reducing emissions, based on the incorporation of environmental costs into the product price, since, in particular in the first place, the allocation of emission allowances free of charge was a transitional measure intended to prevent undertakings from losing competitiveness as a result of the scheme for emission allowance trading and it is not, therefore, directly related to the environmental objective of reducing emissions; in the second place, the rules at issue do not affect the emission allowances market, but rather the windfall profits made by all electricity producers as a result of the value of those allowances being incorporated into the price quoted in the offers accepted for the purposes of setting prices on the wholesale electricity market, in light of the fact that it is a marginalist market; in the third place, the rules at issue, although they may diminish the incentive to reduce greenhouse gas emissions, do not remove that incentive entirely, and therefore do not compromise the environmental objective of Directive 2003/87, which is to encourage the reduction of emissions.

(see paras 29-31, 39, 41, 44-46, 48, 58, 59, operative part)

2. See the text of the decision.

(see para. 43)