

**Party to the main proceedings**

Stefano Burzio

**Question referred**

On a proper construction of Article 4 of [Protocol No 7 to the European Convention on the Protection of Human Rights and Fundamental Freedoms] and Article 50 [of the Charter of Fundamental Rights of the European Union], is the provision made under Article 10a of Legislative Decree No 74 [of 10 March 2000] consistent with Community law, in so far as it permits the criminal liability of a person on whom an irreversible administrative penalty under Article 13(1) of Legislative Decree No 471 [of 18 December 1997] has already been imposed (through the application of a surtax) to be assessed in respect of the same act or omission (non-payment of withholding tax)?

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**Request for a preliminary ruling from the Korkein hallinto-oikeus (Finland) lodged on 12 November 2014 — Yara Suomi Oy, Borealis Polymers Oy, Neste Oil Oyj, SSAB Europe Oy**

(Case C-506/14)

(2015/C 034/09)

*Language of the case: Finnish*

**Referring court**

Korkein hallinto-oikeus

**Parties to the main proceedings**

*Applicants:* Yara Suomi Oy, Borealis Polymers Oy, Neste Oil Oyj, SSAB Europe Oy

*Other party to the proceedings:* Työ- ja elinkeinoministeriö

**Questions referred**

- 1) Is Commission Decision 2013/448/EU <sup>(1)</sup>, in so far as it is based on Article 10a(5) of the Emissions Trading Directive <sup>(2)</sup>, invalid and does it infringe Article 23(3) of that directive, because it was not adopted on the basis of the regulatory procedure with scrutiny, as is prescribed in Article 5a of Council Decision 1999/468/EC <sup>(3)</sup> and Article 12 of Regulation No 182/2011/EU <sup>(4)</sup>? In the event that the answer to that question is in the affirmative, the following questions need not be answered.
- 2) Does Commission Decision 2013/448/EU infringe Article 10a(5)(a) of the Emissions Trading Directive, in so far as the Commission, when establishing the industry cap, did not take into account:
  - (i) some of the verified emissions for the period 2005 to 2007 of activities and installations which for the period 2008 to 2012 were included within the scope of the Emissions Trading Directive, but for which in the period 2005 to 2007 there was no verification obligation and which were therefore not registered in the Community Independent Transaction Log (CITL);
  - (ii) new activities included for the periods 2008 to 2012 and 2013 to 2020 within the scope of the Emissions Trading Directive, in so far as they had not in the period 2005 to 2007 been included within the scope of that Directive and were not carried out at installations which in the period 2005 to 2007 were already within the scope of the Emissions Trading Directive;
  - (iii) emissions from installations decommissioned before 30 June 2011, although in fact in the period 2005 to 2007 and partially also in the period 2008 to 2012 there were verified emissions from those installations?

In the event that the questions 2 (i) to (iii) are to any extent to be answered in the affirmative, is Commission Decision 2013/448/EU with respect to the application of the cross-sectoral correction factor invalid, so that it should not be applied?

- 3) Is Commission Decision 2013/448/EU invalid and does it infringe Article 10a(5) of the Emissions Trading Directive and the objectives of that directive, in that for the calculation of the industry cap under Article 10a(5)(a) and (b) of the Emissions Trading Directive no account is taken of emissions which arise when (i) electricity is generated from waste gases in installations indicated in Annex I to the Emissions Trading Directive which are not 'electricity generators', and (ii) heat is produced in installations indicated in Annex I to the Emissions Trading Directive which are not 'electricity generators', and to which installations under Article 10a(1) to (4) of the Emissions Trading Directive and Decision 2011/278/EU<sup>(5)</sup> allowances ought to be allocated free of charge?
- 4) Is Commission Decision 2013/448/EU — by itself or in conjunction with Article 10a(5) of the Emissions Trading Directive — invalid and does it infringe Article 3(e) and (u) of the Emissions Trading Directive, since for the calculation of the industry cap under Article 10a(5)(a) and (b) of the Emissions Trading Directive the emissions referred to in Question 3 above are left out of account?
- 5) Does Commission Decision 2013/448/EU infringe Article 10a(12) of the Emissions Trading Directive, in so far as the cross-sectoral correction factor is extended to a sector defined in Commission 2010/2/EU<sup>(6)</sup> in which there is a significant risk of carbon leakage?
- 6) Does Decision 2011/278/EU infringe Article 10a(1) of the Emissions Trading Directive, in so far as the Commission's measures for the establishment of benchmarks should take into account incentives for energy efficient techniques, the most efficient techniques, high efficiency co-generation, and the efficient energy recovery of waste gases?
- 7) Does Decision 2011/278/EU infringe Article 10a(2) of the Emissions Trading Directive, in so far as the principles for setting benchmarks should be based on the average performance of the 10 % most efficient installations in a sector?

<sup>(1)</sup> 2013/448/EU: 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 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).

<sup>(3)</sup> 1999/468/EC: Council Decision of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ 1999 L 184, p. 23).

<sup>(4)</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ 2011 L 55, p. 13).

<sup>(5)</sup> 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 (OJ 2011 L 130, p. 1).

<sup>(6)</sup> 2010/2/EU: Commission Decision of 24 December 2009 determining, pursuant to Directive 2003/87/EC of the European Parliament and of the Council, a list of sectors and subsectors which are deemed to be exposed to a significant risk of carbon leakage (notified under document C(2009) 10251) (OJ 2010 L 1, p. 10).

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**Request for a preliminary ruling from the Tribunale civile di Bologna (Italy) lodged on 14 November 2014 — Pebros Servizi s.r.l. v Aston Martin Lagonda Limited**

(Case C-511/14)

(2015/C 034/10)

*Language of the case: Italian*

**Referring court**

Tribunale civile di Bologna