

c) excluded all emissions from installations closed before 30 June 2011.

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- (¹) 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).
- (²) OJ 2000 C 364, p. 1.
- (³) 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).
- (⁴) 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).
- (⁵) 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).
- (⁶) 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 (OJ 2010 L 1, p. 10).
- (⁷) OJ 2014 L 308, p. 114.

Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 13 July 2015 — Cepsa Química, S.A. v Administración del Estado

(Case C-371/15)

(2015/C 311/43)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: Cepsa Química, S.A.

Defendant: Administración del Estado

Questions referred

1. Is Decision 2013/448/EU (¹) contrary to the provisions of Article 296 of the Treaty on the Functioning of the European Union and to Article 41 of the Charter of Fundamental Rights (²) in so far as the correction factor has been established by a mechanism which, in infringement of the obligation to state reasons, does not enable the operators of installations concerned to be informed of the data, calculations and criteria taken into account for its adoption?
2. By defining and fixing as it does the cap for industrial emissions and the cross-sectoral correction factor provided for in Article 10a(5) of Directive 2003/87/EC (³) and Article 15 of Decision 2011/278/EU (⁴), does Decision 2013/448/EU infringe Articles 10a(1) and 23(3) of that Directive because it has not been drawn up in accordance with the regulatory procedure with scrutiny governed by Decision 1999/468/EC (⁵).
3. Having regard to the fact that Decision 2013/448/EU and/or Article 15 of Decision 2011/278/EU create a discrepancy between:

— the calculation basis governed by Article 10a(5)(a) and (b) of Directive 2003/87/EC, by not including in those bases emissions from electricity production related to the combustion of waste gases and from the cogeneration of heat which occur in installations included in Annex I to that Directive, and

- the criteria laid down by Article 10a(1) and (4) of the Directive for the free allocation of emission allowances, which does include that type of emissions:
- a) Do Decision 2013/448/EU and/or Article 15 of Decision 2011/278/EU infringe Article 10a(5), in conjunction with Article 3(u) and the third subparagraph *in fine* of the aforementioned Article 10a(1) of Directive 2003/87/EC in that they consider that emissions produced by combustion of waste gases or by the generation of heat in installations which produce electricity and are included in Annex I to that Directive are in any event emissions from ‘electricity generators’ for the purpose of determining the industrial emissions cap, and must therefore be excluded from the calculation?
 - b) Even if the reply to the previous question is in the negative, do Decision 2013/448/EU and/or Article 15 of Decision 2011/278/EU infringe Article 10a (5) of Directive 2003/87/EC and/or the objectives of that Directive insofar as they exclude from the basis of calculation of the industrial emissions cap governed by that provision emissions from electricity production from waste gases and from the cogeneration of heat, produced in installations included in Annex I to the aforementioned Directive, to which, however, emission allowances may be allocated free of charge under Article 10a(1) to (4) of the Directive?
4. Are Commission Decision 2013/448/EU and, where appropriate, Decision 2011/278/EU, which it implements, contrary to Article 10a(12) of the Directive, because they extend the cross-sectoral correction factor to sectors defined in Commission Decision 2010/2/EU⁽⁶⁾ (now Decision 2014/746/EU)⁽⁷⁾ as they are deemed to be exposed to a significant risk of carbon leakage, with the consequent reduction in free emission allowances allocated?
5. Does Decision 2013/448/EU infringe Article 10a(5) of Directive 2003/87/EEC in so far as the European Commission, in order to determine the verified emissions carried out in the period 2005-2007 to which Article 10a(5)(a) and (b) refers:
- a) did not take into consideration emissions which were not included in the Community independent transaction log, even though, in the period under consideration, it was not obligatory to register such emissions.
 - b) extrapolated, to the extent possible, the relevant emission figures from verified emissions in later years by applying the factor of 1,74 % in reverse direction.
 - c) excluded all emissions from installations closed before 30 June 2011.

⁽¹⁾ 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).

⁽²⁾ OJ 2000 C 364, p. 1.

⁽³⁾ 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).

⁽⁴⁾ 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).

⁽⁵⁾ 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).

⁽⁶⁾ 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 (OJ 2010 L 1, p. 10).

⁽⁷⁾ OJ 2014 L 308, p. 114.