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Press and Information

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Judgment of the Court of First Instance in Case T-178/05

United Kingdom of Great Britain and Northern Ireland v Commission of the European Communities

THE COURT OF FIRST INSTANCE ANNULS THE COMMISSION DECISION DECLARING THAT THE UNITED KINGDOM'S PROPOSED AMENDMENT OF ITS PLAN FOR THE ALLOCATION OF GREENHOUSE GAS EMISSION ALLOWANCES WAS INADMISSIBLE

The United Kingdom was entitled to propose amendments to the plan submitted to the Commission – even though they increased the total quantity of emission allowances – after the adoption by the Commission of a decision concerning the national plan

A directive adopted in 2003¹ establishes a Community scheme for greenhouse gas emission allowance trading in order to reduce such emissions. Each Member State must develop a national plan for the allocation of greenhouse gas emission allowances ('NAP'), in accordance with certain criteria set out in the directive. The NAP must state the total quantity of allowances that the Member State intends to allocate and how it proposes to allocate them. The first NAP, for the three-year period beginning on 1 January 2005, had to be published and notified to the Commission and to the other Member States by 31 March 2004 at the latest.

Under the directive, the Commission has three months to reject a NAP, in whole or in part, if it is incompatible with the criteria laid down by the directive. All amendments made to the NAP by the Member State must be approved by the Commission. The public must also be consulted and its comments taken into account. Each Member State had to take a definitive decision on the basis of the NAP approved by the Commission, taking account of the comments from the public, three months before the beginning of the three-year period, that is to say prior to 1 October 2004.

On 30 April 2004, the United Kingdom notified a NAP to the Commission, indicating it was provisional. The NAP stated that the total quantity of allowances for the period from 2005 to

¹ 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).

2007 would be 736 million tonnes of carbon dioxide (Mt CO₂) but that this figure was subject to further revision in the light of ongoing work.

On 9 June the Commission informed the United Kingdom that its NAP was incomplete and that the missing information had to be supplied. The Commission thus invited the United Kingdom to notify it of 'any amendments' made to the NAP. The United Kingdom replied that it had published a working paper, that it was awaiting comments from the public and that it would notify the Commission as soon as possible of any amendments made to the NAP.

On 7 July the Commission adopted a decision specifying the aspects of the NAP that were incompatible with the directive and inviting the United Kingdom to amend the NAP by 30 September 2004 so as to correct those errors. That decision stated that the total quantity of allowances to be allocated by the United Kingdom was not to be exceeded. The decision also provided that any amendments to the NAP were to be notified to the Commission.

On 10 November the United Kingdom, having already informed the Commission that it was unable to meet the deadline of 30 September, submitted amendments to its NAP. It proposed, in particular, to increase the total quantity of allowances to 756.1 Mt CO₂. On 12 April 2005 the Commission adopted a decision stating that the amendments proposed were inadmissible as, first, the United Kingdom was entitled only to amend its NAP in order to correct the errors identified by the decision of July 2004 and, second, the decision of July 2004 excluded any increases in the total quantity of allowances.

On 5 May 2005 the United Kingdom asked the Court of First Instance to annul the decision of 12 April. The Court granted the request made by the United Kingdom for the proceedings to be expedited, and today it has delivered its first judgment in the field of greenhouse gas emission allowances, clarifying the roles and the powers of the Commission and the Member States in this field.

The Court has annulled the Commission decision declaring the United Kingdom's request to increase the total quantity of CO₂ emission allowances to be inadmissible.

The Court notes that it is for the Member States to adopt a definitive decision concerning allowances, but its adoption is subject to the condition that any amendment to the NAP must be accepted by the Commission.

The Court finds that **the Commission could not restrict a Member State's right to propose amendments.** Such a restriction would deprive the public consultation prescribed by the directive of its effectiveness. The comments of the public would be rendered purely academic if the amendments to the NAP that could be proposed were limited to those envisaged by the Commission. The results of the public consultation may thus make it necessary to increase the allowances and nothing in the directive requires the possibility of such an increase to be precluded.

The Court adds that the directive aims to reduce greenhouse gas emissions while respecting the needs of the European economy. If a NAP were based in part on incorrect information relating to the level of emissions in certain sectors or installations, the Member State concerned would have to be entitled to propose amendments, including an increase to the total quantity of allowances, in order to address those problems. None the less, the Commission may reject the proposals on the merits if they are incompatible with the directive.

The **United Kingdom** was thus **entitled to propose amendments to its NAP** until it adopted its final decision. The Commission was not entitled to constrain the United Kingdom in the exercise of its right.

The Court adds that, in its decision of 7 July 2004, the Commission permitted increases in the total quantity of allowances in order to address gaps which it had identified in the NAP. This approach on the part of the Commission is inconsistent with its refusal to consider such amendments when proposed by the Member State in question.

Finally, the Court rejects the Commission's arguments that the proposed amendments would have serious repercussions on allowance scarcity and a destabilising impact on the allowance market. The United Kingdom expressly indicated its **provisional** intention to allocate a total allowance quantity of 736 Mt CO₂. The proposed increase represented only 2.7% of United Kingdom allowances. The Court considers that the Commission has failed to explain how that increase, announced seven weeks before the opening of the market, could destabilise the market, in particular as, on the date on which the United Kingdom proposed the amendments, the Commission had still not taken a decision on the NAPs of nine Member States.

REMINDER: An appeal, limited to points of law only, may be brought before the Court of Justice of the European Communities against a decision of the Court of First Instance, within two months of its notification.

Unofficial document for media use, not binding on the Court of First Instance.

Languages available: DE, EN, ES, FR, IT, NL, PL, PT

The full text of the judgment may be found on the Court's internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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