

2 October 2009

Carbon Market Ruling Against the Commission

Summary: On Wednesday 23 September, the European Court of First Instance annulled the decision of the European Commission to reduce the carbon credit quotas for Estonia and Poland¹, proposed for the second phase (2008-2012) of the EU Emissions Trading Scheme. Despite some concern that this may undermine the effectiveness of the EU Emissions Trading System (ETS), the European Commission sought to reassure observers that it would take action to protect the integrity of the market.

The dispute

The conflict arose over the number of carbon allowances requested by the two Member States in their National Allocation Plans (NAPs) for the second phase of the EU ETS 2008-2012, submitted in 2006. The Commission found the Estonian and Polish NAPs to be incompatible with the criteria laid out in the parent Directive on the EU ETS (2003/87/EC) and had revised both quotas down significantly: a cut of 48 per cent for Estonia and a 27 per cent cut for Poland. The countries disputed these new quotas, claiming that their industries would be unfairly disadvantaged and their economies damaged.

The Court's Conclusions

The Court stated that it is for Member States to make final decisions on the total quantity of allowances to allocate during the trading period and their distribution among the relevant operators. Additionally, the Court said that Member States have a 'margin for manoeuvre' in determining the method used to draw up their respective NAPs.

The Court clarified that the Commission has some limited power to review NAPs, and to reject them if they are found to be genuinely incompatible with the Directive. However, in this instance the Court ruled that the Commission's reasons for rejecting the two countries' NAPs – based on doubts regarding the reliability of data – were not valid.

The Court stated that the Commission was 'encroaching on the exclusive competence' conferred by the EU ETS Directive to Member States, by effectively imposing an allowance ceiling above which the NAP was considered incompatible with the assessment criteria. Therefore, the Court ruled to annul the Commission decision to reduce the quotas.

Responses to the ruling

An official from the Estonian Ministry for the Environment expressed his frustration with the issue, saying that the decision was not a victory as it sent negative signals ahead of U.N.'s climate change summit in Copenhagen in December of this year. He added that Estonia was not likely to press for the allocation quota it requested in the original NAP. Wider responses to the ruling were surprise at such a strong decision in favour of Estonia and Poland and concern that this would undermine the effectiveness of the EU ETS if Member States have such freedom to set their carbon reduction quotas.

Key issues and analysis

The ruling, however, does not mean that Member States are completely free to do as they choose; the exact technicalities of the Directive, and its NAP criteria, are complex. Furthermore, this case of 'success' for Estonia and Poland cannot inspire other countries to seek the same outcome as it is now too late for countries to begin renegotiating their NAPs for the 2008-2012 period. Additionally, the third phase of the EU ETS, 2013-2020, will see allowances allocated directly to sectors, without the use of NAPs (though companies will be able to challenge the Commission's allocations).

Future developments

The Commission sought to reassure observers that it would do all it could to minimise the legal uncertainties surrounding the ruling and to protect the integrity of the carbon market. Commissioner Stavros Dimas said the Commission was considering whether to appeal the ruling².

There are currently six similar court cases pending against the Commission, filed by other eastern European Member States (Bulgaria, the Czech Republic, Hungary, Latvia, Lithuania and Romania).

References

1. Court of First Instance of the European Communities, Press Release No. 76/09, 23 September 2009, Judgements in the Court of First Instance in Case T-183/07 and in Case T-263/07, Poland v Commission, Estonia v Commission, <http://curia.europa.eu/jcms/upload/docs/application/pdf/2009-09/cp090076en.pdf>
2. European Parliament, Press Release, Emission Trading System: Statement by Commissioner Stavros Dimas on the Court rulings relating to the Commission Decisions on the Estonian and Polish National Allocation Plans for 2008-2012, Brussels, 24 September 2009, <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1355>

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