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JUDGMENT OF THE COURT (First Chamber)
22 February 2018 (*)
(Reference for a preliminary ruling — Environment — Scheme for greenhouse gas emission allowance trading within the European Union — Directive 2003/87/EC — Article 10a — Decision 2011/278/EU — Transitional rules for harmonised free allocation of emission allowances — Period 2013-2020 — Allocation application — Incorrect data — Correction — Mandatory time limit)

In Case C-572/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgericht Berlin (Administrative Court, Berlin, Germany), made by decision of 3 November 2016, received at the Court on 14 November 2016, in the proceedings

INEOS Köln GmbH

v

Bundesrepublik Deutschland,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, C.G. Fernlund, J.-C. Bonichot, A. Arabadjiev and E. Regan (Rapporteur), Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: R. Şereş, Administrator,

having regard to the written procedure and further to the hearing on 14 September 2017,

after considering the observations submitted on behalf of:

INEOS Köln GmbH, by S. Altenschmidt and A. Sitzer, Rechtsanwälte,

the Umweltbundesamt, by I. Budde, acting as Agent,

the German Government, by T. Henze, acting as Agent,

the European Commission, by A.C. Becker and C. Zadra, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 23 November 2017,

gives the following

Judgment

This request for a preliminary ruling concerns the interpretation of Article 10a of 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), as amended by Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 (OJ 2009 L 140, p. 63) ('Directive 2003/87'), and of Commission Decision 2011/278/EU of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87 (OJ 2011 L 130, p. 1).

The request has been made in proccedings between INEOS Köln GmbH ('INEOS') and the Bundesrepublik Deutschland (Federal Republic of Germany), represented by the Umweltbundesamt (Federal Environment Agency, Germany), concerning the refusal to allow that company to correct an application for free allocation of greenhouse gas emission allowances ('the emission allowances') for the third trading period 2013-2020.

Legal context

EU law

Directive 2003/87

Article 1 of Directive 2003/87, entitled 'Subject matter', provides:

'This Directive establishes a scheme for greenhouse gas emission allowance trading within the Community (hereinafter referred to as the "Community scheme") in order to promote reductions of greenhouse gas

emissions in a cost-effective and economically efficient manner.
…'

Under the heading 'Transitional Community-wide rules for harmonised free allocation', Article 10a of that directive provides:

'1. By 31 December 2010, the Commission shall adopt Community-wide and fully-harmonised implementing measures for the allocation of the allowances …

…

2. In defining the principles for setting ex-ante benchmarks in individual sectors or subsectors, the starting point shall be the average performance of the 10% most efficient installations in a sector or subsector in the Community in the years 2007-2008. …

…

5. The maximum annual amount of allowances that is the basis for calculating allocations to installations which are not covered by paragraph 3 and are not new entrants shall not exceed the sum of:

the annual Community-wide total quantity, as determined pursuant to Article 9, multiplied by the share of emissions from installations not covered by paragraph 3 in the total average verified emissions, in the period from 2005 to 2007, from installations covered by the Community scheme in the period from 2008 to 2012; and

the total average annual verified emissions from installations in the period from 2005 to 2007 which are only included in the Community scheme from 2013 onwards and are not covered by paragraph 3, adjusted by the linear factor, as referred to in Article 9.

A uniform cross-sectoral correction factor shall be applied if necessary.
…'

Under Article 11 of the directive, headed 'National implementation measures':

'1. Each Member State shall publish and submit to the Commission, by 30 September 2011, the list of installations covered by this Directive in its territory and any free allocation to each installation in its territory calculated in accordance with the rules referred to in Article 10a(1) and Article 10c.

2. By 28 February of each year, the competent authorities shall issue the quantity of allowances that are to be allocated for that year, calculated in accordance with Articles 10, 10a and 10c.
…'

Decision 2011/278

Recital 15 of Decision 2011/278 is worded as follows:

'Member States should ensure that data collected from the operators and used for allocation purposes is complete, consistent and presents the highest achievable accuracy. It should be verified by an independent verifier so as to ensure that the free allocation of emission allowances is based on solid and reliable data. This decision should provide for specific minimum requirements for data collection and verification to facilitate a harmonised and consistent application of the allocation rules.'

Article 7 of that decision, entitled 'Baseline data collection', provides:

'1. For each incumbent installation eligible for the free allocation of emission allowances under Article 10a of Directive [2003/87], including installations that are operated only occasionally, in particular, installations that are kept in reserve or on standby and installations operating on a seasonal schedule, Member States shall, for all years of the period from 1 January 2005 to 31 December 2008, or 1 January 2009 to 31 December 2010 where applicable, during which the installation has been operating, collect from the operator all relevant information and data regarding each parameter listed in Annex IV.

…

7. Member States shall require operators to submit complete and consistent data and to ensure that there are no overlaps between sub-installations and no double counting. Member States shall, in particular, ensure that operators exercise due diligence and submit data that presents highest achievable accuracy so as to enable reasonable assurance of the integrity of data.

To this end, Member States shall ensure that each operator also submits a methodology report containing, in particular, a description of the installation, the compilation methodology applied, different data sources, calculation steps and, where applicable, assumptions made and the methodology applied to attribute emissions to the relevant sub-installations in accordance with paragraph 6. Member States may order the operator to demonstrate the accuracy and completeness of the data provided.

8. Where data is missing, Member States shall require the operator to duly justify any lack of data.

Member States shall require the operator to substitute all missing data with conservative estimates, in particular, based on best industry practice, recent scientific and technical knowledge before or, at the latest, during verification by the verifier.

…'

Under the heading 'Verification', Article 8 of that decision provides:

'1. In the process of collecting data in accordance with Article 7, Member States shall only accept data that has been verified as satisfactory by a verifier. The verification process shall relate to the methodology report and the reported parameters referred to in Article 7 and Annex IV. The verification shall address the reliability, credibility and accuracy of the data provided by the operator and shall come to a verification opinion that states with reasonable assurance whether the data submitted is free from material misstatements.

…

4. Member States shall not allocate emission allowances free of charge to an installation where data relating to this installation has not been verified as satisfactory.

…'

Article 10 of Decision 2011/278, entitled 'Allocation at installation level', provides:

'1. Based on the data collected in accordance with Article 7, Member States shall, for each year, calculate the number of emission allowances allocated free of charge from 2013 onwards to each incumbent installation on their territory in accordance with paragraphs 2 to 8.

2. For the purpose of this calculation, Member States shall first determine the preliminary annual number of emission allowances allocated free of charge for each sub-installation separately …

…

9. The final total annual amount of emission allowances allocated free of charge for each incumbent installation, except for installations covered by Article 10a(3) of Directive [2003/87], shall be the preliminary total annual amount of emission allowances allocated free of charge for each installation determined in accordance with paragraph 7 multiplied by the cross-sectoral correction factor as determined in accordance with Article 15(3).'

Article 11 of Decision 2011/278, entitled 'Allocation in respect of steam cracking', provides for a specific method, derogating from that set out in Article 10(2) of the decision, for the calculation of the preliminary annual number of emission allowances allocated free of charge for a product benchmark sub-installation relating to the production of high value chemicals.

Under Article 15 of that decision, entitled 'National Implementation measures':

'1. In accordance with Article 11(1) of Directive [2003/87], Member States shall submit to the Commission by 30 September 2011 a list of installations covered by Directive [2003/87] in their territory … using an electronic template provided by the Commission.

2. The list referred to in paragraph 1 shall for each incumbent installation contain, in particular:

…

3. Upon receipt of the list referred to in paragraph 1 of this Article, the Commission shall assess the inclusion of each installation in the list and the related preliminary total annual amounts of emission allowances allocated free of charge.

After notification by all Member States of the preliminary total annual amounts of emission allowances allocated free of charge over the period from 2013 to 2020, the Commission shall determine the uniform cross-sectoral correction factor as referred to in Article 10a(5) of Directive [2003/87]. It shall be determined by comparing the sum of the preliminary total annual amounts of emission allowances allocated free of charge to installations that are not electricity generators in each year over the period from 2013 to 2020 … with the annual amount of allowances that is calculated in accordance with Article 10a(5) of Directive [2003/87] for installations that are not electricity generator[s] or new entrants …

4. If the Commission does not reject an installation's inscription on this list, including the corresponding preliminary total annual amounts of emission allowances allocated free of charge for this installation, the Member State concerned shall proceed to the determination of the final annual amount of emission allowances allocated free of charge for each year over the period from 2013 to 2020 in accordance with Article 10(9) of this decision.

…'

Under Annex IV of Decision 2011/278, entitled 'Parameters for baseline data collection for incumbent installations', the Member States are, for the purposes of the baseline data collection referred to in Article 7(1) of that decision, to require the operator to submit, for each installation and sub-installation, for all calendar years of the baseline period chosen (2005-2008 or 2009-2010), inter alia, total greenhouse gas emissions, greenhouse gas emissions from fuels and those from processes.

German law

Paragraph 9(1) to (4) of the Treibhausgas Emissionshandelsgesetz (Law on greenhouse gas emissions trading)

of 21 July 2011 (BGBl. 2011 I, p. 1475, 'the TEHG'), is worded as follows:

'(1) Installation operators shall receive an allocation of free emission allowances in accordance with the principles laid down in Article 10a … of Directive 2003/87 … in the version in force at the relevant time and with those laid down in Decision 2011/278 …

(2) Allowances shall be allocated only upon application to the competent authority. The application for allocation of free allowances shall be submitted within a time limit which shall be published in the *Bundesanzeiger* (German Federal Gazette) by the competent authority at least three months before its expiry. The time limit shall not be published before the entry into force of the regulation on the rules of allocation as provided for in Paragraph 10. The late submission of an application shall eliminate any entitlement to free allocation. The documents required for the purposes of verifying entitlement shall be enclosed with the application. Unless the regulation referred to in Paragraph 10 provides otherwise, the data contained in the allocation application shall be verified by a verifier pursuant to Paragraph 21.

(3) The competent authority shall calculate the preliminary allocations, publish in the *Bundesanzeiger* a list of all the installations falling within the scope of this Law together with the preliminary allocations and forward that list to the European Commission. When calculating the preliminary allocations, it shall take into account only data, as submitted by the operator, for which there is a sufficient guarantee of accuracy …

(4) The competent authority shall decide on the free allocation of allowances for an installation to an installation operator which has submitted an application within the time limit notified in accordance with the second sentence of Paragraph 2 before the beginning of the trading period. ...'

Paragraph 5 of the Verordnung über die Zuteilung von Treibhausgas-Emissionsberechtigungen in der Handelsperiode 2013 bis 2020 (German Regulation on the allocation of greenhouse gas emission allowances for the 2013-2020 trading period) of 26 September 2011 (BGBl. I. 2011, p. 1921), entitled 'Baseline data collection', provides, in paragraph 1, that the installation operator must include with the application for free allocation for existing installations information relating to the installation and information relating to each allocation component.

By its notice in the electronic version of the German Federal Gazette (elektronischer Bundesanzeiger, eBAnz AT118 2011 B1) on 20 October 2011, the Deutsche Emissionshandelsstelle (German Emissions Trading Authority) ('the DEHSt') stated that the time limit laid down in Paragraph 9(2) of the TEHG expired on 23 January 2012.

The dispute in the main proceedings and the question referred for a preliminary ruling

INEOS operates an installation for the production of chemical products through steam cracking of naphtha at high temperatures. That installation has been subject to compulsory emissions trading since 1 January 2008.

On 23 January 2012, INEOS submitted an application, within the prescribed time limit, to the DEHSt for the free allocation of emission allowances for that installation, as provided for in Paragraph 9(1) of the TEHG, for the period 2013-2020, on the basis of the 2005-2008 baseline period. Pursuant to Paragraph 9(2), the period for submitting such applications expired on the same day. It is apparent from the documents before the Court that that application was verified by an independent monitoring body. It included, inter alia, the preliminary annual allocation of emissions allowances of 574 635, according to the calculations that INEOS performed using the specific calculation method laid down in Article 11 of Decision 2011/278 for steam cracking.

By decision of 17 February 2014, the DEHSt allocated INEOS a total of 3 867 032 allowances for that trading period in respect of emissions for the installation concerned, specifying that the allocation was based on the data communicated by INEOS in its allocation application ('the contested decision').

On 11 March 2014, INEOS lodged an administrative objection to the contested decision with the DEHSt, claiming that the DEHSt was required to take into account additional data relating to the calculation of direct emissions for the years 2006 and 2007.

On 3 September 2015, the DEHSt dismissed that objection on the ground, inter alia, that the new data could not be taken into account for the free allocation of emission allowances as INEOS had not submitted the data until April 2015 in the context of the administrative objection, that is to say more than three years after the time limit for making the allocation application had expired, namely 23 January 2012. The DEHSt stated not only that Paragraph 9(2) of the TEHG laid down a statutory mandatory time limit, but also that the close integration of the national procedure in the allocation procedure provided for by EU law precluded any amendment of the data in that application.

On 29 September 2015, INEOS brought an action against that rejection decision before the Verwaltungsgericht Berlin (Administrative Court, Berlin, Germany), arguing, inter alia, that it had inadvertently omitted to submit certain data concerning its direct emissions for 2006 and 2007, wrongly assuming that the DEHSt already had that data, although the installation in question had been subject to the trading scheme for emission allowances

only from 1 January 2008. According to INEOS, the DEHSt was under an obligation to ask it to supplement or correct the data provided for the purposes of the allocation application.

According to the referring court, since EU law does not contain any express rule on the legal consequences of the submission of information by an operator after expiry of the time limit laid down by national law for the submission of an allocation application, it is necessary to clarify whether Paragraph 9(2) of the TEHG, under which in the case of the late submission of an application there is no entitlement to free allocation, is compatible with the provisions of Directive 2003/87 and Decision 2011/278.

In those circumstances, the Verwaltungsgericht Berlin (Administrative Court, Berlin) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Do the provisions of Article 10a of Directive [2003/87] and the provisions of Decision [2011/278] preclude legislation enacted by a Member State which, for the 2013-2020 trading period, prescribes a mandatory substantive time limit applicable to out-of-time applications for the allocation of free emission allowances to existing installations, thereby making it impossible to correct errors or to supplement (incomplete) data in the allocation application in cases where such shortcomings are not established until after the time limit laid down by the Member State has expired?'

Consideration of the question referred

By its question, the referring court asks whether Article 10a of Directive 2003/87 and Decision 2011/278 must be interpreted as meaning that they preclude a national provision, such as that at issue in the main proceedings, which lays down, for the submission of an application for the free allocation of emission allowances for the period 2013-2020, a limitation period upon the expiry of which the applicant is deprived of any possibility to correct or complete his application.

It is apparent from the order for reference that that question is raised in the context of a dispute in which the operator of an installation covered by the scheme for emission allowance trading from 1 January 2008, namely INEOS, inadvertently omitted to provide in its application for free allocation of emission allowances certain baseline data, namely those concerning that installation's direct emissions for 2006 and 2007. It is common ground that, were it not for that error, that operator would have obtained more free emission allowances.

As a preliminary point, it should be noted that Directive 2003/87 has the purpose of establishing a scheme for greenhouse gas emission allowance trading, which aims to reduce greenhouse gas emissions in the atmosphere to a level that prevents dangerous anthropogenic interference with the climate system, with the ultimate objective of protection of the environment (see, inter alia, judgment of 8 March 2017, *ArcelorMittal Rodange et Schifflange*, C-321/15, EU:C:2017:179, paragraph 24).

There is an economic logic underlying the scheme which encourages a participant in that scheme to emit quantities of greenhouse gases that are less than the allowances originally allocated him, in order to sell the surplus to another participant who has emitted more than his allowance (see, inter alia, judgment of 8 March 2017, *ArcelorMittal Rodange et Schifflange*, C-321/15, EU:C:2017:179, paragraph 22).

Directive 2003/87 therefore aims to reduce, by 2020, the overall greenhouse gas emissions of the European Union by at least 20% in comparison with 1990 levels, in an economically efficient manner (judgment of 8 September 2016, *E.ON Kraftwerke*, C-461/15, EU:C:2016:648, paragraph 23).

For that purpose, Article 10a of Directive 2003/87 provides, with regard to installations in certain sectors of activity, for the free allocation of emission allowances, the quantity of which is to decrease gradually over the period 2013-2020, with a view to reaching the complete abolition of free allowances in 2027 (see, to that effect, judgments of 8 September 2016, *E.ON Kraftwerke*, C-461/15, EU:C:2016:648, paragraph 24, and of 26 October 2016, *Yara Suomi and Others*, C-506/14, EU:C:2016:799, paragraph 46).

In accordance with Article 10a(1) of Directive 2003/87, the Commission established, by Decision 2011/278, Union-wide harmonised rules for that free allocation of emission allowances. Those harmonised rules give concrete expression to the essential requirement that distortions of competition in the internal market be minimised (judgment of 22 June 2016, *DK Recycling und Roheisen* v *Commission*, C-540/14 P, EU:C:2016:469, paragraph 53).

According to INEOS, the EU legislature thus undertook a comprehensive harmonisation of all aspects, including procedural aspects, relating to applications for free allocation of emission allowances, with the result that Member States do not enjoy any discretion in that regard. However, it is apparent both from the wording of the relevant provisions of Decision 2011/278, in particular Articles 7, 8 and 10, and from the general scheme of that directive and the objective which it pursues that Member States had the obligation to ensure the completeness, correctness and consistency of baseline data collected from operators. That decision does not, however, provide that those obligations of Member States may be time-limited or that they can set their own

mandatory time limits.

In that regard, it should be noted that the procedure established by the EU legislature for the free allocation of emission allowances for the period 2013-2020 included, in essence, three distinct stages.

First of all, during the first stage, the Member States were obliged, in accordance with Article 7 of Decision 2011/278, to collect from operators, for each incumbent installation eligible for such an allocation, all relevant information and data for all the years, in principle, of the period from 2005-2008 during which the installation has been operating, regarding each of the parameters listed in Annex IV to that decision which enables the amount of the allocation to be determined (see judgment of 8 September 2016, *E.ON Kraftwerke*, C-461/15, EU:C:2016:648, paragraph 25).

Under Article 8(1) of Decision 2011/278, the Member States were required to accept for that purpose only data that has been verified as satisfactory by a verifier which had to test its reliability, credibility and accuracy with a view to reaching a verification opinion with reasonable assurance as to whether there is any material misstatement.

On the basis of the information thus gathered, the Member States, in accordance with Article 10 of Decision 2011/278, had to calculate for each year the preliminary number of emission allowances allocated free of charge from 2013 onwards to each incumbent installation on their territory (judgment of 8 September 2016, *E.ON Kraftwerke*, C-461/15, EU:C:2016:648, paragraphs 26 and 34).

At the end of that first stage, each Member State had the obligation, under Article 11(1) of Directive 2003/87 and Article 15(1) and (2) of Decision 2011/278, to publish and submit to the Commission, by 30 September 2011, the list of installations and sub-installations in its territory covered by the directive, specifying for each of them the amount of the preliminary allocation for the entire period 2013-2020.

Next, in the second stage, the Commission was required, upon receipt of that list and where the preliminary total annual amount calculated by the Member States exceeded the industry ceiling corresponding to the maximum annual amount of allowances referred to in Article 10a(5) of Directive 2003/87, to make a proportionate reduction of that preliminary amount calculated by the Member States by applying the 'cross-sectoral correction factor' provided for in that provision, which corresponds to the ratio between that preliminary amount and the ceiling (see, to that effect, judgment of 28 April 2016, *Borealis Polyolefine and Others*, C-191/14, C-192/14, C-295/14, C-389/14 and C-391/14 to C-393/14, EU:C:2016:311, paragraphs 62 and 63).

Finally, in the third stage, the Member States were required, under Article 15(4) and (5) of Decision 2011/278, to determine the final annual amount of emission allowances allocated free of charge for each year of the period 2013-2020, by multiplying, in accordance with Article 10(9) of that decision, the preliminary total annual amount of free emission allowances by the cross-sectoral correction factor. Under Article 11(2) of Directive 2003/87, the Member States are to issue the allowances allocated for the year concerned no later than 28 February of that year.

In the present case, as is already apparent from paragraph 25 of the present judgment, the mandatory time limit laid down in Paragraph 9(2) of the TEHG, at issue in the main proceedings, concerns the first stage of this procedure, during which, inter alia, the operators were required, under Article 7 of Decision 2011/278, to provide the competent national authorities with the baseline data, listed in Annex IV to that decision, relating to the period 2005-2008, for each of the installations concerned.

It should be noted that, contrary to what is claimed by INEOS, the EU legislature has not effected comprehensive harmonisation of this stage of the procedure. Whilst, admittedly, Directive 2003/87 and Decision 2011/278 have set out a framework for that stage, neither that directive nor that decision has specified the period in which an operator is required to submit its allocation application, let alone the period in which that operator could, where appropriate, correct or supplement the information submitted in support of that application.

In that regard, it should be noted that Article 7(8) of Decision 2011/278 specifies that, where data is missing, Member States are to require the operator to justify any 'lack of data' and to substitute 'partly available data' with conservative estimates, without, however, establishing a procedure that would make it possible to correct or supplement the information provided. Similarly, while Article 8 of that decision prohibits Member States from accepting data that have not been verified as satisfactory by a verifier, that provision does not establish a time limit or a procedure for correcting unsatisfactory data.

In those circumstances, in the absence of EU rules concerning the procedural requirements attaching to the submission and examination of an application for free allocation of emission allowances, it is, according to established case-law, for the domestic legal system of each Member State to determine those requirements in

accordance with the principle of procedural autonomy provided, however, that those requirements are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not render impossible in practice or excessively difficult the exercise of rights conferred by the EU legal order (principle of effectiveness) (see, to that effect, inter alia, judgment of 20 October 2016, *Danqua*, C-429/15, EU:C:2016:789, paragraph 29).

With regard to the principle of equivalence, there is nothing in the documents before the Court to suggest, and it has not been claimed in the present proceedings, that the mandatory time limit at issue in the dispute in the main proceedings is contrary to that principle. In any event, it is for the national court to give a ruling in this regard, as the Commission rightly states.

As regards the principle of effectiveness, it should be recalled that, according to settled case-law, every case in which the question arises as to whether a national procedural provision makes the application of EU law impossible or excessively difficult must be analysed by reference to the role of that provision in the procedure, its conduct and its special features, viewed as a whole, before the various national bodies. In that context, it is necessary, inter alia, to take into consideration, where relevant, the protection of the rights of the defence, the principle of legal certainty and the proper conduct of the procedure (see, inter alia, judgment of 20 October 2016, *Danqua*, C-429/15, EU:C:2016:789, paragraph 42).

As regards, more particularly, time limits, the Court has held that, in respect of national rules which come within the scope of EU law, it is for the Member States to establish those time limits in the light of, inter alia, the significance for the parties concerned of the decisions to be taken, the complexities of the procedures and of the legislation to be applied, the number of persons who may be affected and any other public or private interests which must be taken into consideration (see, inter alia, judgment of 20 October 2016, *Danqua*, C-429/15, EU:C:2016:789, paragraph 44).

In that regard, it is clear from the case-law that the setting of time limits must, in principle, satisfy the requirement of effectiveness since it constitutes an application of the fundamental principle of legal certainty which protects both the person and the administration concerned. Such time limits are not, in principle, liable to make it in practice impossible or excessively difficult to exercise the rights conferred by EU law (see, inter alia, judgment of 21 December 2016, *TDC*, C-327/15, EU:C:2016:974, paragraph 98).

It follows that, in the interests of legal certainty, laying down reasonable time limits is compatible with EU law (judgment of 29 October 2015, *BBVA*, C-8/14, EU:C:2015:731, paragraph 28).

Here, it is clear from the order for reference that the deadline for the submission of applications for free allocation of emission allowances laid down in Paragraph 9(2) of the TEHG was 23 January 2012. As is apparent from paragraph 15 above, it is not disputed that that date was officially published on 20 October 2011. Furthermore, it is apparent from the written observations submitted to the Court by the German Government, which were not disputed on that point, that the date of that deadline was also, that same day, brought to the attention of the operators in an email sent to them and which was the subject of a press release.

It follows that, in the main proceedings, the mandatory time limit imposed on operators for the submission of their applications for free allocation of emission allowances under Article 10a of Directive 2003/87 and the relevant provisions of Decision 2011/278 for the period 2013-2020 was slightly more than three months.

It is appropriate, therefore, to determine whether such a time limit was liable to render impossible in practice or excessively difficult the exercise by an operator, such as INEOS in the main proceedings, of a right conferred by EU law.

In that regard, it should be noted that, although Article 10a of Directive 2003/87 and Decision 2011/278 give certain operators, such as INEOS, the right to receive free emission allowances for the period 2013-2020, that operator has not argued, in the present case, that the time limit of slightly longer than three months was too short for it to submit its allocation application in order for it to be granted such a right, that operator having, moreover, submitted that application within that time limit. In addition, as the Advocate General noted in point 87 of his Opinion, the documents before the Court do not contain any evidence to suggest that the mandatory time limit at issue makes the exercise of that right impossible in practice or excessively difficult.

On the other hand, it is apparent from the order for reference that, as has already been stated in paragraphs 25 and 39 of this judgment, that operator disputes that it is not possible to supplement the application after the expiry of that time limit in order to correct inaccurate data it provided in respect of emissions from its own installations.

However, it must be recalled that, according to settled case-law, a mandatory time limit is, in principle, compatible with the principle of effectiveness, even though the expiry of such a time limit is by its nature liable to prevent the persons concerned from asserting their rights in whole or in part (see, inter alia, judgments of

16 May 2000, *Preston and Others*, C-78/98, EU:C:2000:247, paragraph 34; of 18 September 2003, *Pflücke*, C-125/01, EU:C:2003:477, paragraph 35; and of 8 September 2011, *Q-Beef and Bosschaert*, C-89/10 and C-96/10, EU:C:2011:555, paragraph 36).

Therefore, the mere fact that the mandatory time limit at issue in the main proceedings, by its very nature, prevents an applicant for free allocation of emission allowances from providing further data after the expiry of that time limit cannot, in itself, be sufficient to establish an infringement of the principle of effectiveness.

It follows that there is nothing in the documents before the Court to suggest that such a mandatory time limit is liable to render impossible in practice or excessively difficult the submission of an application for free allocation of emission allowances for the purpose of exercising the right to obtain free emission allowances under Article 10a of Directive 2003/87 and Decision 2011/278.

INEOS maintains, however, that it follows from the Member States' obligation to rely, for the purpose of calculating those allowances, on the most precise and fullest possible baseline data, that the competent national authorities are required, with a view to ensuring the effective application of EU law, to set aside any procedural requirement, such as the mandatory time limit at issue in the main proceedings, preventing the correction of inaccurate data.

In that regard, it is true, as the Court has already pointed out, that the Member States, in accordance with Article 7(7) of Decision 2011/278 read in conjunction with recital 15 of that decision, must ensure that the data collected from the operators and used for free allocation of emission allowances is complete, consistent and presents the highest achievable accuracy (judgment of 8 September 2016, *E.ON Kraftwerke*, C-461/15, EU:C:2016:648, paragraphs 27 and 37).

Similarly, as is already apparent from paragraph 34 above, Article 8(1) of Decision 2011/278 requires Member States to ensure that a verifier has checked 'the reliability, credibility and accuracy' of that data with a view to reaching a verification opinion that states with 'reasonable assurance' whether there are material misstatements.

Such a requirement of accuracy is a matter for the Member States, as is apparent both from those provisions and from recital 15 of Decision 2011/278, so that they are able to achieve the objective of reducing greenhouse gas emissions, referred to in paragraphs 26 to 28 above, by a harmonised and consistent application of the allocation rules.

However, as is clear, inter alia, from the wording of Article 7(7) and (8) of Decision 2011/278, the requirement of accuracy on the part of Member States requires the cooperation of operators and, on that basis, those operators are also required to comply with various obligations including, in particular, communicating complete, consistent data which is as accurate as possible and exercising due diligence.

Those cooperation obligations imposed on operators are therefore clearly intended, as the Federal Environment Agency and the German Government rightly point out, to encourage those operators, since they are the source of the baseline data necessary for the calculation of free emission allowances, to exercise due diligence to ensure the collection of data which is as accurate as possible, so that Member States can themselves fulfil their obligations under Articles 7 and 8 of Decision 2011/278 and thus achieve the objective of reducing greenhouse gas emissions pursued by Directive 2003/87.

In those circumstances, as the Advocate General observed in points 93 and 94 of his Opinion, it must be held that the requirement of accuracy is a joint responsibility of operators and Member States and that, therefore, it cannot be held, contrary to what is claimed by INEOS, that these operators derive from Decision 2011/278 any right to the accuracy of data provided for the purposes of calculating free emission allowances that they may assert against their Member State. It follows that the effective application of that decision in no way obliges the competent national authorities to set aside a procedural rule, such as the mandatory time limit at issue in the main proceedings, in order to enable an operator to correct inaccurate data provided by itself within that time limit.

It follows that there is nothing in the file submitted to the Court to suggest that a mandatory time limit, such as that at issue in the main proceedings, infringes the principle of effectiveness.

That assessment is all the more compelling in the circumstances of the case in the main proceedings, given that, as is apparent from the information submitted to the Court by the German Government, which has not been challenged by INEOS in that respect, from October 2011 the national competent authorities have repeatedly stated to the operators concerned that in respect of installations which, like that belonging to INEOS at issue in the main proceedings, were subject to the emissions trading system only from 1 January 2008, an additional submission of the relevant data listed in Article 5 of the regulation concerning the allocation of greenhouse gas emission allowances for the trading period 2013 to 2020, from 26 September 2011, was

necessary when the baseline period 2005-2008 was chosen.

Furthermore, it should be noted that, in the present case, the correction of incorrect data in order to obtain additional free emission allowances, if feasible, would take place not only on completion of the first stage, but also after the third and final stage of the procedure, following notification of the contested decision.

Such a late correction could infringe the principle of legal certainty, since any free allocation of emission allowances could remain provisional indefinitely, as the first stage of the procedure could still be reopened. This would result in a serious disruption of the proper conduct of the allocation procedure of free emission allowances.

Finally, contrary to INEOS's submission, a different interpretation cannot be inferred from the judgment of 28 April 2016, *Borealis Polyolefine and Others* (C-191/14, C-192/14, C-295/14, C-389/14 and C-391/14 to C-393/14, EU:C:2016:311). It is true that, in paragraph 97 of that judgment, the Court held that it was for the Commission to ask the Member States to make the 'necessary corrections' to the emission data provided. However, in that case, the error resulted, as is apparent from paragraphs 94 and 95 of that judgment, from the Commission taking into account data sent by the Member States concerning emissions for a period not covered by Article 10a(5)(b) of Directive 2003/87. It is solely because of the seriousness of that error, which substantially affected the uniform cross-sectoral correction factor and, ultimately, the number of allowances to be freely allocated, that the principle of legal certainty did not preclude calling that factor into question *ex nunc* from the time specified in paragraph 111 of that judgment.

In the light of the foregoing, the answer to the question referred is that Article 10a of Directive 2003/87 and Decision 2011/278 must be interpreted as meaning that they do not preclude a national provision, such as that at issue in the main proceedings, which lays down, for the submission of an application for free allocation of emission allowances for the period 2013-2020, a mandatory time limit after which the applicant has no means of correcting or supplementing its application, since that time limit is not liable to render impossible in practice or excessively difficult the submission of such an application.

Costs

Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

Article 10a of 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, as amended by Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009, and Commission Decision 2011/278/EU of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87, must be interpreted as meaning that they do not preclude a national provision, such as that at issue in the main proceedings, which lays down, for the submission of an application for free allocation of emission allowances for the period 2013-2020, a mandatory time limit after which the applicant has no means of correcting or supplementing its application, since that time limit is not liable to render impossible in practice or excessively difficult the submission of such an application.

[Signatures]

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* Language of the case: German.