JUDGMENT OF THE COURT (First Chamber)

19 January 2017 (*)

(Reference for a preliminary ruling — Environment — Scheme for greenhouse gas emission allowance trading within the European Union — Directive 2003/87/EC — Monitoring plan — Regulation (EU) No 601/2012 — Article 49(1) and point 10 of Annex IV — Calculation of the emissions of an installation — Subtraction of carbon dioxide (CO2) transferred — Exclusion of CO2 used in the production of precipitated calcium carbonate — Legality of the exclusion)

In Case C-460/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgericht Berlin (Administrative Court, Berlin, Germany), made by decision of 26 June 2015, received at the Court on 28 August 2015, in the proceedings

Schaefer Kalk GmbH & Co. KG

v

Bundesrepublik Deutschland,

THE COURT (First Chamber),

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

Advocate General: E. Sharpston,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 30 June 2016,

after considering the observations submitted on behalf of:

– Schaefer Kalk GmbH & Co. KG, by S. Altenschmidt and A. Sitzer, Rechtsanwälte,

– the Bundesrepublik Deutschland, by M. Fleckner, acting as Agent,

– the German Government, by T. Henze and K. Petersen, acting as Agents,

– the European Commission, by E. White and K. Herrmann, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 10 November 2016,

gives the following

Judgment

1 This request for a preliminary ruling concerns the validity of Article 49(1) of Commission Regulation (EU) No 601/2012 of 21 June 2012 on the monitoring and reporting of greenhouse gas emissions pursuant

to Directive 2003/87/EC of the European Parliament and of the Council (OJ 2012 L 181, p. 30) and point 10 of Annex IV thereto.

2 The request has been made in proceedings between Schaefer Kalk GmbH & Co. KG ('Schaefer Kalk') and the Bundesrepublik Deutschland (Federal Republic of Germany) concerning the refusal to allow that company to subtract from the emissions subject to the monitoring obligation the carbon dioxide (CO_2) generated in an installation for the calcination of lime transferred to a precipitated calcium carbonate ('PCC') installation.

Legal context

EU law

Directive 2003/87/EC

3 According to recital 5, 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') aims to contribute to fulfilling the commitments of the European Union and its Member States to reduce anthropogenic greenhouse gas emissions 'more effectively, through an efficient European market in greenhouse gas emission allowances, with the least possible diminution of economic development and employment'.

4 In accordance with Article 2(1), Directive 2003/87 is to apply to emissions from the activities listed in Annex I to that directive and greenhouse gases listed in Annex II to the directive, including CO_2.

5 Article 3 of that directive, headed 'Definitions', provides:

'For the purposes of this Directive the following definitions shall apply:

…

(b) "emissions" means the release of greenhouse gases into the atmosphere from sources in an installation …

…

(e) "installation" means a stationary technical unit where one or more activities listed in Annex I are carried out and any other directly associated activities which have a technical connection with the activities carried out on that site and which could have an effect on emissions and pollution;

…'

6 Article 10a of the directive, headed 'Transitional Community-wide rules for harmonised free allocation', provides:

'1. By 31 December 2010, the Commission shall adopt Community-wide and fully-harmonised implementing measures for the allocation of the allowances referred to in paragraphs 4, 5, 7 and 12 …

…

The measures referred to in the first subparagraph shall, to the extent feasible, determine Community-wide ex-ante benchmarks so as to ensure that allocation takes place in a manner that provides incentives for reductions in greenhouse gas emissions and energy efficient techniques, by taking account of the most

efficient techniques, substitutes, alternative production processes, high efficiency cogeneration, efficient energy recovery of waste gases, use of biomass and capture and storage of CO_2, where such facilities are available, and shall not provide incentives to increase emissions. No free allocation shall be made in respect of any electricity production, except for cases falling within Article 10c and electricity produced from waste gases.

For each sector and subsector, in principle, the benchmark shall be calculated for products rather than for inputs, in order to maximise greenhouse gas emissions reductions and energy efficiency savings throughout each production process of the sector or the subsector concerned.

…

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. …

The regulations pursuant to Articles 14 and 15 shall provide for harmonised rules on monitoring, reporting and verification of production-related greenhouse gas emissions with a view to determining the ex-ante benchmarks.

…’

7 Under Article 12(3) and (3a) of Directive 2003/87:

‘3. Member States shall ensure that, by 30 April each year, the operator of each installation surrenders a number of allowances … equal to the total emissions from that installation during the preceding calendar year as verified in accordance with Article 15, and that these are subsequently cancelled.

3a. An obligation to surrender allowances shall not arise in respect of emissions verified as captured and transported for permanent storage to a facility for which a permit is in force in accordance with Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 [on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006 (OJ 2009 L 140, p. 114)].’

8 Article 14 of Directive 2003/87, headed ‘Monitoring and reporting of emissions’, states:

‘1. By 31 December 2011, the Commission shall adopt a regulation for the monitoring and reporting of emissions and, where relevant, activity data, from the activities listed in Annex I, for the monitoring and reporting of tonne-kilometre data for the purpose of an application under Articles 3e or 3f, which shall be based on the principles for monitoring and reporting set out in Annex IV and shall specify the global warming potential of each greenhouse gas in the requirements for monitoring and reporting emissions for that gas.

That measure, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 23(3).

2. The regulation referred to in paragraph 1 shall take into account the most accurate and up-to-date scientific evidence available, in particular from the [Intergovernmental panel on climate change (IPCC)], and may also specify requirements for operators to report on emissions associated with the production of goods produced by energy intensive industries which may be subject to international competition. That regulation may also specify requirements for this information to be verified independently.

Those requirements may include reporting on levels of emissions from electricity generation covered by the Community scheme associated with the production of such goods.

3. Member States shall ensure that each operator of an installation or an aircraft operator monitors and reports the emissions from that installation during each calendar year, or, from 1 January 2010, the aircraft which it operates, to the competent authority after the end of that year in accordance with the regulation referred to in paragraph 1.

4. The regulation referred to in paragraph 1 may include requirements on the use of automated systems and data exchange formats to harmonise communication on the monitoring plan, the annual emission report and the verification activities between the operator, the verifier and competent authorities.'

9 The first paragraph of Article 15 of the directive states:

'Member States shall ensure that the reports submitted by operators … pursuant to Article 14(3) are verified in accordance with the criteria set out in Annex V and any detailed provisions adopted by the Commission in accordance with this Article, and that the competent authority is informed thereof.'

10 Article 16 of Directive 2003/87 provides that Member States are to lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to the directive.

Regulation No 601/2012

11 Recitals 1, 5 and 13 of Regulation No 601/2012 are worded:

'(1) The complete, consistent, transparent and accurate monitoring and reporting of greenhouse gas emissions, in accordance with the harmonised requirements laid down in this Regulation, are fundamental for the effective operation of the greenhouse gas emission allowance trading scheme established pursuant to Directive 2003/87/EC. …

…

(5) The monitoring plan, setting out detailed, complete and transparent documentation concerning the methodology of a specific installation or aircraft operator should be a core element of the system established by this Regulation. Regular updates of the plan should be required, both to respond to the verifier's findings and on the basis of the operator's or aircraft operator's own initiative. The main responsibility for the implementation of the monitoring methodology, parts of which are specified by procedures required by this Regulation, should remain with the operator or the aircraft operator.

…

(13) To close potential loopholes connected to the transfer of inherent or pure CO_2, such transfers should only be allowed subject to very specific conditions. Those conditions are that the transfer of inherent CO_2 should only be to other EU-ETS installations and the transfer of pure CO_2 should only occur for the purposes of storage in a geological storage site pursuant to the Union's greenhouse gas emission allowance trading scheme, which is at present the only form of permanent storage of CO_2 accepted under the Union's greenhouse gas emission trading scheme. Those conditions should not, nevertheless, exclude the possibility of future innovations.'

12 The first paragraph of Article 5 of that regulation provides:

'Monitoring and reporting shall be complete and cover all process and combustion emissions from all emission sources and source streams belonging to activities listed in Annex I to Directive 2003/87/EC and other relevant activities included pursuant to Article 24 of that Directive, and of all greenhouse gases specified in relation to those activities while avoiding double-counting.'

13 Under the first paragraph of Article 11(1) of the regulation:

‘Each operator or aircraft operator shall monitor greenhouse gas emissions, based on a monitoring plan approved by the competent authority in accordance with Article 12, taking into account the nature and functioning of the installation or aviation activity to which it applies.’

14 Article 20(2) of Regulation No 601/2012 provides that, ‘when defining the monitoring and reporting process, the operator shall include the sector specific requirements laid down in Annex IV’.

15 Article 49(1) of that regulation contains the following provisions:

‘The operator shall subtract from the emissions of the installation any amount of CO_2 originating from fossil carbon in activities covered by Annex I to Directive 2003/87/EC, which is not emitted from the installation, but transferred out of the installation to any of the following:

(a) a capture installation for the purpose of transport and long-term geological storage in a storage site permitted under Directive 2009/31/EC;

(b) a transport network with the purpose of long-term geological storage in a storage site permitted under Directive 2009/31/EC;

(c) a storage site permitted under Directive 2009/31/EC for the purpose of long-term geological storage.

For any other transfer of CO_2 out of the installation, no subtraction of CO_2 from the installation’s emissions shall be allowed.’

16 Point 10 of Annex IV to Regulation No 601/2012, headed ‘Activity-specific monitoring methodologies related to installations (Article 20(2))’ addresses the ‘production of lime or calcination of dolomite or magnesite as listed in Annex I to Directive 2003/87/EC’. Under point 10(B) of Annex IV to Regulation No 601/2012, regarding ‘Specific monitoring rules’, it is provided inter alia:

‘Where CO_2 is used in the plant or transferred to another plant for the production of PCC (precipitated calcium carbonate), that amount of CO_2 shall be considered emitted by the installation producing the CO_2.’

German law

17 Paragraph 3 of the Gesetz über den Handel mit Berechtigungen zur Emission von Treibhausgasen (Law on greenhouse gas emission allowance trading) of 21 July 2011 (BGBl. I p. 1475, ‘the TEHG’) provides:

‘For the purposes of this Law, the following definitions shall apply:

…

5. Emissions:

the release of greenhouse gases into the atmosphere from an activity listed under Annex 1, Part 2; in accordance with [Regulation No 601/2012], the transfer of greenhouse gases is regarded as a release into the atmosphere;

…’

18 Under Paragraph 5(1) of the TEHG:

‘The operator shall, in accordance with Part 2 of Annex 2, calculate the emissions caused by its activities in a calendar year and shall report those emissions to the competent authority by 31 March of the following year. …’

19 Paragraph 6 of the TEHG states:

‘1. The operator shall, for each allowance trading period, submit a monitoring plan concerning the calculation and reporting of emissions under Paragraph 5(1) to the competent authority. …

2. The monitoring plan requires approval. Approval must be granted where the monitoring plan satisfies the requirements of [Regulation No 601/2012], the regulation provided for in Article 28(2)(1) and, should no rules be laid down in those regulations, the requirements of the third sentence of Part 2 of Annex 2. …’

The main proceedings and the questions referred for a preliminary ruling

20 Schaefer Kalk operates an installation for the calcination of lime in Hahnstätten (Germany), whose operation is subject to the scheme for greenhouse gas emission allowance trading.

21 In connection with the procedure for the approval of a monitoring plan of its installation initiated before the Deutsche Emissionshandelsstelle im Umweltbundesamt (German Emissions Trading Authority at the Federal Environment Agency, ‘the DEHSt’), Schaefer Kalk applied for authorisation to subtract from the amount of greenhouse gas emissions referred to in the emissions report the CO_2 transferred for the production of PCC to an installation not subject to the EU-ETS. It considers that the CO_2 thereby transferred is chemically bound in the PCC and that, not being emitted into the atmosphere, it should not be regarded as ‘emissions’ as defined in Article 3(b) of Directive 2003/87.

22 The DEHSt having approved the monitoring plan without addressing the issue of subtracting transferred CO_2, Schaefer Kalk brought a complaint in that regard, which was rejected on 29 August 2013. The DEHSt took the view that such subtraction was not possible under Article 49 of Regulation No 601/2012 and Annex IV thereto, from which it appeared that only the CO_2 transferred to one of the long-term geological storage installations listed in that article may be subtracted from the emissions of an installation subject to the monitoring and reporting obligation.

23 By its action brought on 10 September 2013 before the Verwaltungsgericht Berlin (Administrative Court, Berlin, Germany), Schaefer Kalk reiterated its claim. It relied on the illegality of the second sentence of Article 49(1) of Regulation No 601/2012 and of point 10(B) of Annex IV thereto. It submits that those provisions, which subject CO_2 bound in PCC and transferred for the production of that substance to mandatory participation in the EU-ETS, are not covered by the powers granted under Article 14(1) of Directive 2003/87.

24 Harbouring doubts as to the validity of those provisions of Regulation No 601/2012, the Verwaltungsgericht Berlin (Administrative Court, Berlin) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Is Regulation [No 601/2012] invalid and does it infringe the aims of Directive 2003/87/EC in so far as the second sentence of Article 49(1) provides that CO_2 that is not transferred within the meaning of the first sentence of Article 49(1) is to be considered emitted by the installation producing the CO_2?

(2) Is Regulation [No 601/2012] invalid and does it infringe the aims of Directive 2003/87 in so far as point 10 of Annex IV provides that CO_2 that is transferred to another plant for the production of [PCC] is to be considered emitted by the installation producing the CO_2?’

Consideration of the questions referred

25 As a preliminary matter, it must be stated that, under the second sentence of Article 49(1) of Regulation No 601/2012 and of point 10(B) of Annex IV thereto, the CO_2 produced by an installation for the calcination of lime and transferred, as in the case in the main proceedings, to another installation for the production of PCC is regarded as having been emitted by the first installation.

26 By its questions, which it is appropriate to consider together, in essence, the referring court asks the Court to rule on the validity of those provisions in so far as, by systematically including the CO_2 transferred for the production of PCC in the emissions of a lime combustion installation, regardless of whether or not that CO_2 is released into the atmosphere, those provisions go beyond the definition of emissions as provided for in Article 3(b) of Directive 2003/87.

27 In that regard, it should be noted that Regulation No 601/2012 was adopted on the basis of Article 14(1) of Directive 2003/87, according to which the Commission is to adopt a regulation, inter alia, for the monitoring and reporting of emissions, that measure being designed to amend non-essential elements of the directive by supplementing it. Consequently, an assessment, in the present case, of the validity of the provisions at issue from that regulation requires determination whether the Commission, by adopting those provisions, did not exceed the limits as provided for in Directive 2003/87.

28 According to recital 5, Directive 2003/87 is intended to establish a scheme for greenhouse gas emission allowance trading capable of contributing to the fulfilment of the commitments of the European Union and of its Member States under the Kyoto Protocol to the United Nations Framework Convention on Climate Change, approved, on behalf of the European Community, by Council Decision 2002/358/EC of 25 April 2002 (OJ 2002 L 130, p. 1), which seeks to reduce those emissions into the atmosphere to a level preventing dangerous anthropogenic interference with the climate system and the ultimate objective of which is to protect the environment.

29 The economic logic underlying the greenhouse gas emission allowance, in accordance with Article 1 of Directive 2003/87, consists in ensuring that the reductions of greenhouse gas emissions required to achieve a predetermined environmental outcome take place at the lowest cost. By allowing, in particular, the allowances allocated to be sold, the scheme is intended to encourage a participant in the scheme to emit quantities of greenhouse gases 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, judgments of 16 December 2008, *Arcelor Atlantique et Lorraine and Others*, C-127/07, EU:C:2008:728, paragraph 32, and of 7 April 2016, *Holcim (Romania)* v *Commission*, C-556/14 P, not published, EU:C:2016:207, paragraphs 64 and 65).

30 Thus, one of the pillars on which the scheme established by Directive 2003/87 is built is the obligation for operators to surrender by 30 April of the current year, in order to have them cancelled, a number of greenhouse gas emission allowances equal to their emissions during the preceding calendar year (judgment of 29 April 2015, *Nordzucker*, C-148/14, EU:C:2015:287, paragraph 29).

31 It is therefore crucial, for the correct operation of the scheme established by Directive 2003/87, for those emissions to be identified which must be taken into account by operators in that regard.

32 According to Article 3(b) of Directive 2003/87, ‘emissions’ are, for the purposes of that directive, defined as the release of greenhouse gases into the atmosphere from sources in an installation. It follows from the very wording of that provision that, for there to be an emission within the meaning of that provision, a greenhouse gas must be released into the atmosphere.

33 Indeed, it should be noted in that regard that Article 12(3a) of Directive 2003/87 provides that, subject to certain conditions, emissions which have been captured and transported for their permanent geological storage to a facility for which a permit is in force in accordance with Directive 2009/31 are not subject to the allowance surrender obligations.

34 Nevertheless, and contrary to the submissions of the Commission, that does not mean that the EU legislature considered that operators are exempt from the obligation to surrender only in the sole instance of permanent geological storage.

35 By contrast to the last paragraph of Article 49(1) of Regulation No 601/2012, which provides that for any other transfer of CO_2 no subtraction of CO_2 from the installation's emissions is to be allowed, Article 12(3a) of Directive 2003/87 contains no similar rule.

36 The latter provision, which refers only to a particular situation and is intended to encourage the storage of greenhouse gases, was not intended to, and did not, amend the definition of 'emissions' within the meaning of Article 3 of Directive 2003/87, or even, by implication, the scope of that directive as established in Article 2(1) thereof.

37 Consequently, for the purposes of determining whether the CO_2 resulting from the activity of lime production by an installation such as that at issue in the main proceedings falls within the scope of Directive 2003/87, under Article 2(1) thereof, and Annexes I and II thereto, it is necessary to ascertain whether such lime production leads to the release of CO_2 into the atmosphere.

38 It appears from the material before the Court, which has not been disputed, that the CO_2 used for the production of PCC is chemically bound in that stable product. Moreover, the activities of PCC production are not among those which fall within the scope of that directive under Article 2(1) of Directive 2003/87 read in conjunction with Annex I thereto.

39 However, in a situation such as that at issue in the main proceedings, where the CO_2 produced by an installation for the production of lime is transferred to an installation for the production of PCC, it appears, under the second sentence of Article 49(1) of Regulation No 601/2012 and point 10(B) of Annex IV to that regulation, that all of the CO_2 transferred, whether or not part of that CO_2 is released into the atmosphere during its transportation, due to leakages, or even the production process itself, is regarded as having been emitted by the installation for the production of lime in which that CO_2 was produced, although the transfer might not result in any release of CO_2 into the atmosphere. As the Advocate General noted in point 41 of her Opinion, those provisions create an irrebuttable presumption that all the CO_2 transferred has been released into the atmosphere.

40 Those provisions thus lead to the CO_2 transferred in such circumstances being regarded as falling under the definition of 'emissions' within the meaning of Article 3(b) of Directive 2003/87, despite not always being released into the atmosphere. By the second sentence of Article 49(1) of Regulation No 601/2012 and point 10(B) of Annex IV to that regulation, the Commission therefore broadened the scope of that definition.

41 Furthermore, it follows from that presumption that the operators concerned may not, in any circumstances, subtract the amount of CO_2 transferred for the production of PCC from the aggregate emissions of their installations for the production of lime, despite the fact that that CO_2 may not always be released into the atmosphere. Such an impossibility means that the allowances must be surrendered for all of the CO_2 transferred for the production of PCC and may no longer be sold as excess, thus calling into question the allowance trading scheme in circumstances nevertheless consonant with the ultimate objective of Directive 2003/87, which seeks to protect the environment by means of a reduction of greenhouse gas emissions (as regards the aims of Directive 2003/87, see judgment of 16 December 2008, *Arcelor Atlantique et Lorraine and Others*, C-127/07, EU:C:2008:728, paragraph 31).

42 In adopting those provisions, the Commission therefore amended an essential element of Directive 2003/87.

43 Moreover, it does not appear, in the first place, that the guarantees taken as a whole arising, on the one hand, from the monitoring and reporting scheme provided for in Directive 2003/87 and from the provisions of Regulation No 601/2012 other than those at issue in the main proceedings, and arising, on the other, from the powers of review and verification conferred on the competent authorities of the Member States (see, to that effect, judgment of 29 April 2015, *Nordzucker*, C-148/14, EU:C:2015:287, paragraph 37) would not be sufficient to avoid the risk of circumventing the emissions allowance scheme upon the transfer of greenhouse gases to an installation, such as that where the PCC is produced, not subject to that scheme.

44 Against that background, although the second sentence of Article 49(1) of Regulation No 601/2012 and point 10(B) of Annex IV to that regulation ensure that the CO_2 transferred to an installation, such as that where the PCC is produced, whether or not released into the atmosphere, is always regarded as an emission into the atmosphere, such a presumption, in addition to prejudicing the coherency of the scheme put in place as regards the objective of Directive 2003/87, goes beyond what is necessary for attaining that objective.

45 In the second place, since Regulation No 601/2012 was adopted on the basis of Article 14(1) of Directive 2003/87 in order to clarify the monitoring and reporting conditions of greenhouse gas emissions, the scope of the provisions of that regulation which are at issue in the present case, and concern only such emissions within the meaning of Article 3(b) of Directive 2003/87, cannot be affected by other provisions of that directive relating to the production of CO_2 and taken into account, inter alia, for the establishment of the 'ex-ante benchmarks' referred to in Article 10a of the same directive.

46 For the same reason, that scope cannot be affected by the requirement imposed on the Commission under Article 14(2) of Directive 2003/87 to take into account, in the drafting of Regulation No 601/2012, the most accurate and up-to-date scientific evidence available. In that regard, even supposing that the most up-to-date evidence from the IPCC had rightly prompted the Commission to adopt a stricter approach concerning transfers of CO_2 and, as a result and as far as possible, to attribute greenhouse gases to their source, such an attribution can, however, be accepted, in any event, only within the framework laid down by Directive 2003/87, as set out in paragraph 27 above.

47 In the third place, it is undoubtedly the case that, although the principal objective of the scheme for greenhouse gas emission allowance trading is to reduce emissions of such gases substantially, one of its sub-objectives is to preserve the integrity of the internal market and of conditions of competition (see, to that effect, judgments of 29 March 2012, *Commission* v *Estonia*, C-505/09 P, EU:C:2012:179, paragraph 79, and of 22 June 2016, *DK Recycling und Roheisen* v *Commission*, C-540/14 P, EU:C:2016:469, paragraphs 49 and 50). However, as the Advocate General noted in point 49 of her Opinion, there is an objective difference between an operator who releases greenhouse gases into the atmosphere and an operator who avoids such emissions by chemically transforming the CO_2 produced into a new, stable chemical in which it is bound. Consequently, although as far as the scheme for greenhouse gas emission allowance trading is concerned such a difference allows the second operator to hold onto a greater allowance than the first, that difference cannot be regarded per se as distorting competition between those two operators.

48 It follows from all the foregoing considerations that the Commission, having altered an essential element of Directive 2003/87 when it adopted the second sentence of Article 49(1) of Regulation No 601/2012 and point 10(B) of Annex IV to that regulation, overstepped the limits laid down in Article 14(1) of that directive.

49 Consequently, the answer to the questions referred is that the second sentence of Article 49(1) of Regulation No 601/2012 and point 10(B) of Annex IV to that regulation are invalid in so far as they systematically include the CO_2 transferred to another installation for the production of PCC in the

emissions of the lime combustion installation, regardless of whether or not that CO_2 is released into the atmosphere.

Costs

50 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national 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:

The second sentence of Article 49(1) of Commission Regulation (EU) No 601/2012 of 21 June 2012 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council and point 10(B) of Annex IV to that regulation are invalid in so far as they systematically include the carbon dioxide (CO_2) transferred to another installation for the production of precipitated calcium carbonate in the emissions of the lime combustion installation, regardless of whether or not that CO_2 is released into the atmosphere.

[Signatures]

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*Language of the case: German.