Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

26 July 2017 [1]

(Reference for a preliminary ruling — Environment — Directive 2003/87/EC — Article 10a(1) — EU greenhouse gas emission allowance trading scheme — Free allocation of allowances — Decision 2011/278/EU — Validity — Principle of sound administration — Determination of the product benchmark for hot metal — Use of data in the 'BREF' for iron and steel production and guidelines for establishing benchmarks for hot metal — Meaning of 'similar products' — Reference installations — Obligation to state reasons)

In Case C-80/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the tribunal administratif de Montreuil (Administrative Court, Montreuil, France), made by decision of 4 February 2016, received at the Court on 12 February 2016, in the proceedings

ArcelorMittal Atlantique et Lorraine SASU

v

Ministre de l'Écologie, du Développement durable et de l'Énergie,

THE COURT (First Chamber),

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

Advocate General: N. Wahl,

Registrar: V. Giacobbo-Peyronnel, Administrator,

having regard to the written procedure and further to the hearing on 26 January 2017,

after considering the observations submitted on behalf of:

– ArcelorMittal Atlantique et Lorraine SASU, by J. Herschtel, avocate,

– the French Government, by D. Colas, T. Deleuil and J. Traband, acting as Agents,

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

– the Swedish Government, by A. Falk, acting as Agent,

– the European Commission, by E. White and K. Mifsud-Bonnici and by O. Beynet, acting as Agents,

1 * Language of the case: French.

after hearing the Opinion of the Advocate General at the sitting on 9 March 2017,

gives the following

Judgment

1 This request for a preliminary ruling concerns the validity 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/EC of the European Parliament and of the Council (OJ 2011 L 130, p. 1).

2 The request has been made in the course of proceedings between ArcelorMittal Atlantique et Lorraine SASU, an operator of greenhouse gas-emitting installations, and the ministre de l'Écologie, du Développement durable et de l'Énergie (Minister for Ecology, Sustainable Development and Energy, France, 'the Minister'), concerning the legality of the decree adopted by the Minister on 24 January 2014 setting out a list of operators to whom greenhouse gas emissions allowances have been allocated and the amount of allowances allocated free of charge for the period 2013-2020, and of the Decision of 11 June 2014 as well by which the Minister dismissed the application for withdrawal of that decree.

Legal context

EU law

Directive 2009/29

3 Recital 23 of Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community (OJ 2009 L 140, p. 63) states:

'Transitional free allocation to installations should be provided for through harmonised Community-wide rules (*ex ante* benchmarks) in order to minimise distortions of competition within the Community. Those rules should take account of the most greenhouse gas and energy-efficient techniques, substitutes, alternative production processes, use of biomass, renewables and CO_2 capture and storage. Any such rules should not give incentives to increase emissions and should ensure that an increasing proportion of these allowances is auctioned. Allocations must be fixed prior to the trading period so as to enable the market to function properly. Those harmonised rules may also take into account emissions related to the use of combustible waste gases when the production of these waste gases cannot be avoided in the industrial process. In this respect, the rules may provide for allowances to be allocated for free to operators of installations combusting the waste gases concerned or to operators of the installations where these gases originate. They should also avoid undue distortions of competition on the markets for electricity and heating and cooling supplied to industrial installations. Furthermore, they should avoid undue distortions of competition between industrial activities carried out in installations operated by a single operator and production in outsourced installations. Those rules should apply to new entrants carrying out the same activities as existing installations receiving transitional free allocations. To avoid any distortion of competition within the internal market, no free allocation should be made in respect of the production of electricity by new entrants. Allowances which remain in the new entrants' reserve in 2020 should be auctioned.'

Directive 2003/87

4 Article 1 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 ('Directive 2003/87'), states:

'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.

…'

5 According to Article 10a of Directive 2003/87:

'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, including any necessary provisions for a harmonised application of paragraph 19.

Those measures, 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).

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.

In defining the principles for setting *ex ante* benchmarks in individual sectors and subsectors, the Commission shall consult the relevant stakeholders, including the sectors and subsectors 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 Commission shall consult the relevant stakeholders, including the sectors and subsectors concerned.

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.

3. Subject to paragraphs 4 and 8, and notwithstanding Article 10c, no free allocation shall be given to electricity generators, to installations for the capture of CO_2, to pipelines for transport of CO_2 or to CO_2 storage sites.

…

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:

(a) 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

(b) 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.

…

11. Subject to Article 10b, the amount of allowances allocated free of charge under paragraphs 4 to 7 of this Article in 2013 shall be 80% of the quantity determined in accordance with the measures referred to in paragraph 1. Thereafter the free allocation shall decrease each year by equal amounts resulting in 30% free allocation in 2020, with a view to reaching no free allocation in 2027.

12. Subject to Article 10b, in 2013 and in each subsequent year up to 2020, installations in sectors or subsectors which are exposed to a significant risk of carbon leakage shall be allocated, pursuant to paragraph 1, allowances free of charge at 100% of the quantity determined in accordance with the measures referred to in paragraph 1.'

Decision 2011/278

6 Recitals 2, 4, 6, 8, 11 and 32 of Decision 2011/278 state as follows:

'(2) In defining the principles for setting *ex ante* benchmarks in individual sectors or subsector(s), the starting point should be the average performance of the 10% most efficient installations in a sector or subsector in the EU in the years 2007-2008. The benchmarks should 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.

…

(4) To the extent feasible, the Commission has developed benchmarks for products, as well as intermediate products that are traded between installations, produced from activities listed in Annex I to Directive 2003/87/EC. In principle, for each product one benchmark should be defined. Where a product is a direct substitute of another product, both should be covered by the same product benchmark and the related product definition.

…

(6) The benchmark values should cover all production-related direct emissions, including emissions related to the production of measurable heat used for production, regardless of whether the measurable heat was produced on-site or by another installation. Emissions related to the production of electricity and to the export of measurable heat, including avoided emissions of alternative heat or electricity production in cases of exothermic processes or the production of

electricity without direct emissions, were deducted when setting the benchmark values. … In case the deduction of emissions related to the export of measurable heat was not feasible, this heat should not be eligible for the free allocation of emission allowances.

…

(8) For the determination of benchmark values, the Commission has used as a starting point the arithmetic average of the greenhouse gas performance of the 10% most greenhouse gas efficient installations in 2007 and 2008 for which data has been collected. In addition, the Commission has in accordance with Article 10a(1) of Directive 2003/87/EC analysed for all sectors for which a product benchmark is provided for in Annex I, on the basis of additional information received from several sources and on the basis of a dedicated study analysing most efficient techniques and reduction potentials at European and international level, whether these starting points sufficiently reflect 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 carbon dioxide, where such facilities are available. Data used for determining the benchmark values has been collected from a wide range of sources in order to cover a maximum of installations producing a benchmarked product in the years 2007 and 2008. First, data on the greenhouse gas performance of ETS installations producing benchmarked products has been collected by or on behalf of the respective European sector associations based on defined rules, so-called 'sector rule books'. As reference for these rule books, the Commission provided guidance on quality and verification criteria for benchmarking data for the EU-ETS. Second, to complement the data collection by European sector associations, consultants on behalf of the European Commission collected data from installations not covered by industry's data and also competent authorities of Member States provided data and analyses.

…

(11) In case no data or no data collected in compliance with the benchmarking methodology has been available, information on present levels of emissions and consumptions and on most efficient techniques, mainly derived from the Reference Documents on Best Available Techniques (BREF) established in accordance with Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control … has been used to derive benchmark values. In particular, due to a lack of data on the treatment of waste gases, heat exports and electricity production, the values for the product benchmarks for coke and hot metal have been derived from calculations of direct and indirect emissions based on information on relevant energy flows provided by the relevant BREF and default emission factors set out in Commission Decision 2007/589/EC of 18 July 2007 establishing guidelines for the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council … For the product benchmark for sintered ore, data has also been corrected based on relevant energy flows provided by the relevant BREF, taking into account the combustion of waste gases in the sector.

…

(32) It is also appropriate that the product benchmarks take account of the efficient energy recovery of waste gases and emissions related to their use. To this end, for the determination of the benchmark values for products of which the production generates waste gases, the carbon content of these waste gases has been taken into account to a large extent. Where waste gases are exported from the production process outside the system boundaries of the relevant product benchmark and combusted for the production of heat outside the system boundaries of a benchmarked process as defined in Annex I, related emissions should be taken into account by means of allocating additional emission allowances on the basis of the heat or fuel benchmark. In the light of the general principle that no emission allowances should be allocated for free in respect of any electricity production, to avoid undue distortions of competition on the markets for electricity supplied to industrial installations and taking into account the inherent carbon price in electricity, it is appropriate that, where waste gases are exported from the production process outside the system boundaries of the relevant product benchmark and combusted for the production of electricity, no additional allowances are allocated beyond the share of the carbon content of the waste gas accounted for in the relevant product benchmark.'

7 Article 1 of Decision 2011/278 provides:

'This Decision lays down transitional Union-wide rules for the harmonised free allocation of emission allowances under Directive 2003/87/EC from 2013 onwards.'

8 Article 2 of Decision 2011/278 states:

'This Decision shall apply to the free allocation of emission allowances under Chapter III (stationary installations) of Directive 2003/87/EC in trading periods from 2013 with the exception of transitional free allocation of emission allowances for the modernisation of electricity generation pursuant to Article 10c of Directive 2003/87/EC.'

9 Sintered ore and hot metal are defined in Annex I to Decision 2011/278.

10 Sintered ore is defined as an 'agglomerated iron-bearing product containing iron ore fines, fluxes and iron — containing recycling materials with the chemical and physical properties such as the level of basicity, mechanical strength and permeability required to deliver iron and necessary flux materials into iron ore reduction processes' and hot metal is defined as 'liquid iron saturated with carbon for further processing'.

French law

11 Article R.229-8 of the French Environment Code, in the version applicable to the facts in the main proceedings, provides:

'I. On the basis of the data collected in accordance with Article 7 of Decision 2011/278/EU … and Article R. 229-7, the Minister for the Environment shall set out by decree a list of operators to whom allowances are to be allocated and then issued free of charge.

That decree is to be issued following approval by the European Commission of the list of installations notified to it under the provisions of Directive 2003/87/EC and shall state for each installation the total number of allowances allocated and the number of allowances issued free each year as well.

The decree shall be published in the Official Journal and the prefect shall provide every operator with a copy by email.

The Nuclear Safety Authority shall ensure such publication and provide copies to operators in respect of equipment and installations mentioned in the first paragraph of Article L.593-3 and classified installations mentioned in the second paragraph of that Article.

II. The national administrator of the European registry shall record on the operators' accounts, by 28 February at the latest each year, the allocation to individual installations provided for by the decree referred to in I.

III. A decree issued by the Minister for the Environment and the Minister for Industry shall set out the conditions and calculation methods for allocating and issuing those allowances, including on a provisional basis, for each installation.'

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

12 ArcelorMittal Atlantique et Lorraine SASU is a French company operating installations in the steel industry. Under Article 2(1) of, and Annexes I and II to, Directive 2003/87, such installations fall within the scope of that directive. The company is, therefore, required to take part in the scheme for greenhouse gas emission allowance trading.

13 The company brought proceedings against the Minister's Decree of 24 January 2014 setting out a list of operators to whom greenhouse gas emissions allowances have been allocated and the amount of allowances allocated free of charge for the period 2013-2020, and against the Decision of 11 June 2014 by which the Minister dismissed the application for withdrawal of that decree.

14 In its action, the applicant in the main proceedings claims that that decree and that decision are illegal, in so far as they are based on Commission Decision 2011/278 and Decision 2013/448/EU 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 (OJ 2013 L 240, p. 27), which it claims do not comply with Directive 2003/87.

15 The applicant in the main proceedings objects, in particular, to the fact that the benchmark for hot metal, established by the Commission and used to calculate the number of greenhouse gas emission allowances to be allocated to the various industrial installations producing such a product, does not allow for the emissions from waste gases used in the production of electricity and that that benchmark is not based on the most up-to-date data. According to the applicant, the benchmark for sintered ore is not compatible with Directive 2003/87 either, since the calculation it is based on included an installation also producing pellets.

16 The tribunal administratif de Montreuil (Administrative Court, Montreuil, France) notes that the Commission enjoys broad discretion in determining the benchmarks. It believes, however, that, in accordance with Article 10a(1) of Directive 2003/87, a greenhouse gas emission allowance should be allocated for electricity produced from waste gases. It also believes that the ground of undue distortion of competition, relied upon by the Commission in Decision 2011/278 in order to oppose allocation of greenhouse gas emission allowances for electricity produced from waste gases, is open to dispute, inasmuch as the steel sector is a net consumer of electricity.

17 Furthermore, the referring court raises the question whether the Commission did in fact use the most relevant data available in order to determine the benchmark for hot metal, and expresses doubts as to the use by the Commission of data relating to an installation producing both sintered ore and pellets for calculating the benchmark for sintered ore. In its opinion, the Commission did not state sufficient reasons for its choice.

18 In those circumstances, the tribunal administratif de Montreuil (Administrative Court, Montreuil) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) In Decision 2011/278 …, did the Commission …, by excluding emissions from recycled waste gases used in the production of electricity from the benchmark value for hot metal, breach Article 10a(1) of Directive 2003/87 … concerning the rules for establishing *ex ante* benchmarks, and in particular the objective of efficient energy recovery of waste gases and the option of allocating allowances free of charge in the case of electricity produced from waste gases?

(2) By basing its determination of the benchmark for hot metal in that decision on the data in the iron and steel 'BREF' and [on the data reported in application of the guidelines for the monitoring and reporting of greenhouse gas emissions in 2007], did the Commission infringe the obligation to use the most exact and up-to-date scientific data available and/or the principle of sound administration?

(3) In Decision 2011/278 …, is the Commission's inclusion …, if proven, of a factory producing both sintered ore and pellets in the reference installations for determining the benchmark for sintered ore such as to vitiate the value of that benchmark on grounds of illegality?

(4) Did the Commission, by failing to state specifically the reasons for proceeding as it did in that decision, infringe the obligation to state reasons laid down in Article 296 [TFEU]?'

Consideration of the questions referred

The first question

19 By its first question, the referring court asks the Court of Justice, in essence, to rule on the validity of Decision 2011/278 having regard to the third subparagraph of Article 10a(1) of Directive 2003/87 and, particularly, having regard to the method employed by the Commission to set the benchmark for hot metal, in so far as it excluded allowing for greenhouse gas emissions from recycled waste gases used in the production of electricity.

20 In this respect, according to the third subparagraph of Article 10a(1) of Directive 2003/87, no greenhouse gas allowance is to be allocated free of charge in respect of electricity production, with the exception of, inter alia, electricity produced from waste gases.

21 That exception is intended, by means of allocating greenhouse gas emission allowances, to encourage reduction of those emissions and the use of effective techniques to improve energy efficiency.

22 As the Advocate General noted in point 30 of his Opinion, waste gases are a by-product inevitably emitted during the production of coke or steel. It is not disputed that, from both an economic and ecological point of view, the recovery of those gases is greatly more beneficial than bleeding them off.

23 Furthermore, recital 32 of Decision 2011/278 provides that, in order to respect the general principle stated in Article 10a of Directive 2003/87, no additional greenhouse gas emission allowance is to be allocated beyond the share of the carbon content of the waste gas accounted for in the relevant product benchmark.

24 The applicant in the main proceedings claims that the Commission was wrong not to take into account, in the product benchmark for hot metal, all emissions from the combustion of recycled waste gases used in the production of electricity, which, according to the applicant, is contrary to the third subparagraph of Article 10a(1) of Directive 2003/87.

25 First, it should be noted that the use of waste gases for electricity production means that those gases are used as a substitute for another fuel. Therefore, a single fuel is used for both the production of steel and, through combustion of waste gases emitted in that process, for the production of electricity.

26 Second, in order to determine the extent to which the benchmark for hot metal has to take account of the carbon content of waste gases in electricity production, the Commission used natural gas as the reference fuel. Recycling waste gases in order to produce electricity means that the installation concerned emits more greenhouse gases than if natural gas was used.

27 If the free allocation of greenhouse gas allowances automatically covered all electricity produced from waste gases, that would amount to allocating allowances free of charge not only for additional emissions which should be compensated so as not to discourage the recovery of those gases, but also for emissions that would have been created anyway in order to produce electricity, whatever the fuel used, and for which compensation is excluded, in accordance with the third subparagraph of Article 10a(1) of Directive 2003/87.

28 Moreover, the Court has previously ruled, in paragraph 73 of 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), that it is clear from recital 32 of Decision 2011/278 that the Commission did indeed take into consideration, in accordance with the third subparagraph of Article 10a(1) of Directive 2003/87, emissions related to the efficient energy recovery of waste gases for the production of electricity.

29 It follows from the foregoing, therefore, that examination of the first question has revealed nothing that could affect the validity of Decision 2011/278, having regard to the third subparagraph of Article 10a(1) of Directive 2003/87.

The second question

30 By its second question, the referring court asks the Court, in essence, to rule on the validity of Decision 2011/278 in so far as it is alleged that the Commission disregarded the obligation to use the most exact and up-to-date scientific data available, and the principle of sound administration too, by basing its determination of the benchmark for hot metal in that decision on the data in the iron and steel BREF and on the data reported in application of the guidelines for the monitoring and reporting of greenhouse gas emissions in 2007 ('the LDSD 2007').

31 It should be noted that the Commission has broad discretion in determining the benchmarks in individual sectors or subsectors under Article 10a(2) of Directive 2003/87. That exercise entails, on the institution's part, choices and complex technical and economic assessments as well. The legality of a measure adopted in that area can be affected only if the measure is manifestly inappropriate (judgments of 8 September 2016, *Borealis and Others*, C-180/15, EU:C:2016:647, paragraph 45, and of 26 October 2016, *Yara Suomi and Others*, C-506/14, EU:C:2016:799, paragraph 37).

32 It is clear from recital 11 of Decision 2011/278 that, when no data were available or the data collected did not comply with the benchmarking methodology, information on present levels of emissions and consumptions and on most efficient techniques, mainly derived from the BREFs, was used to derive benchmark values. In particular, due to a lack of data on the treatment of waste gases, heat exports and electricity production, the values for the product benchmarks for coke and hot metal were derived from calculations of direct and indirect emissions based on information on relevant energy flows provided by the relevant BREF and default emission factors set out in the LDSD 2007 (judgments of 8 September 2016, *Borealis and Others*, C-180/15, EU:C:2016:647, paragraph 47, and of 26 October 2016, *Yara Suomi and Others*, C-506/14, EU:C:2016:799, paragraph 39).

33 Furthermore, in respect of waste gases generated during the production of hot metal, according to recital 32 of Decision 2011/278 the product benchmarks take account of the efficient energy recovery of waste gases and emissions related to use of those gases. To that end, for the determination of the benchmark values for products of which the production generates waste gases, the carbon content of those waste gases has been taken into account to a large extent (judgments of 8 September 2016, *Borealis and Others*, C-180/15, EU:C:2016:647, paragraph 48, and of 26 October 2016, *Yara Suomi and Others*, C-506/14, EU:C:2016:799, paragraph 40).

34 In such circumstances, it does not appear that, by basing its determination of the benchmark for hot metal in Decision 2011/278 on the data in the iron and steel BREF and the LDSD 2007, the Commission infringed the obligation to use the most exact and up-to-date scientific data available and the principle of sound administration.

35 In the light of the foregoing, it must be held that examination of the second question referred has revealed nothing that could affect the validity of Decision 2011/278.

The third question

36 By its third question, the referring court asks the Court, in essence, to rule on the validity of Decision 2011/278 in that, in that decision, the Commission took into consideration a factory producing both sintered ore and pellets in the reference installations for determining the benchmark for sintered ore.

37 It should be noted that, as stated in paragraph 31 of this judgment, the Commission has broad discretion to determine the benchmarks in individual sectors or subsectors under Article 10a(2) of Directive 2003/87. Therefore, the legality of a measure adopted in that area can be affected only if the measure is manifestly inappropriate (judgments of 8 September 2016, *Borealis and Others*, C-180/15, EU:C:2016:647, paragraph 45, and of 26 October 2016, *Yara Suomi and Others*, C-506/14, EU:C:2016:799, paragraph 37).

38 Article 10a(2) of Directive 2003/87 states that in defining the principles for setting benchmarks, the starting point is to be the average performance of the 10% most efficient installations in a sector or subsector in the EU in the years 2007 and 2008. That principle is reiterated in recital 2 of Decision 2011/278.

39 Furthermore, recital 4 of Decision 2011/278 sets out the principle that, when a product is a direct substitute of another product, both should be covered by the same product benchmark and the related product definition.

40 It is apparent from the case file before the Court and the arguments put forward at the hearing that pellets and sintered ore cannot generally be substituted for one another and are not, therefore covered by the same product benchmark. Indeed, pellets and sintered ore are different not only in their product characteristics but also in their composition.

41 The applicant in the main proceedings claims that, by taking into consideration an installation producing both sintered ore and pellets in the reference installations for determining the benchmark for sintered ore, the Commission breached Article 10(1) of Directive 2003/87 and recital 4 of Decision 2011/278. In its opinion, the benchmark for sintered ore has, effectively, been distorted by the use of data relating to the production of pellets, which emit fewer greenhouse gases.

42 At the hearing, however, the Commission did explain that the Corus Ijmuiden installation, to which this question refers, was the only steel plant in the European Union producing a mixture of pellets and sintered ore which could, owing to its properties, be used in blast furnaces as a direct substitute for sintered ore. That integrated steel plant includes both a production unit for pellets and a production unit for sintered ore which are connected in order to provide a mixture directly feeding blast furnaces. It was in that particular context that the Commission was able to consider pellets and sintered ore to be substitutable.

43 In this connection the applicant in the main proceedings countered, however, that it was clear from all the official documents and, in particular, from the BREF on iron and steel production that the installation in question had two distinct units producing pellets and sintered ore.

44 In that context, it must be noted, on the one hand, that determining whether the special characteristics of a particular installation have a bearing on its inclusion among the reference installations for the purposes of setting the benchmark for sintered ore clearly falls within the sphere of complex technical assessments, in which the Commission has broad discretion. On the other hand, the Commission is better placed than the Court to make such an assessment. Having regard to the information available, it has not been clearly established that, by taking the installation in question into account, the Commission made any manifest error of assessment. On the contrary, as the Advocate General noted in points 71 and 72 of his Opinion it appears that despite the special characteristics of the installation, the product manufactured constitutes a direct substitute for sintered ore.

45 As the Commission noted at the hearing, the experts it consulted and particularly the European association of steel producers, Eurofer, confirmed that the fabrication process of this mixture could be considered similar to that of sintered ore. The final product from such an installation therefore has similar properties to those of sintered ore and can be directly substituted for the latter for use in blast furnaces.

46 In those circumstances, since the two production units together allow the manufacture of a unique product which is substitutable for sintered ore, the production of pellets must be considered to be one of the 'processes directly or indirectly linked to the process units' within the meaning of the definition of sintered ore in Annex I to Decision 2011/278. Accordingly, it is right that the product benchmark for sintered ore takes into account this pellet production unit.

47 Had the Commission failed to take into account the installation producing a sintered ore substitute it would have adopted a decision contrary to the purpose of Article 10a(1) of Directive 2003/87, which is to provide 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 do not encourage an increase in emissions.

48 Therefore, it does not appear from the foregoing that the Commission made a manifest error of assessment by taking into account the Corus Ijmuiden integrated installation in order to determine the benchmark for sintered ore, given that the product manufactured in that installation can directly substitute sintered ore.

49 In those circumstances, by including a factory producing both sintered ore and pellets in the reference installations for determining the benchmark for sintered ore, the Commission did not vitiate Decision 2011/278 with illegality.

50 In the light of the foregoing, it must be held that examination of the third question referred has revealed nothing that could affect the validity of Decision 2011/278 in that, in that decision, the Commission took into consideration a factory producing both sintered ore and pellets in the reference installations for determining the benchmark for sintered ore.

The fourth question

51 With its fourth question, the referring court asks the Court to rule on the validity of Decision 2011/278 in so far as it is alleged that the Commission, by failing to state specifically the reasons for proceeding in the manner in which it did in determining the benchmark for hot metal, infringed the obligation to state reasons laid down in Article 296 TFEU.

52 In that regard it must be noted that, according to settled case-law, the statement of reasons required by that provision must be appropriate to the measure at issue and must disclose clearly and unequivocally the reasoning followed by the institution which adopted it, in such a way as to enable the persons

concerned to ascertain the reasons for it and to enable the Community judicature to exercise its power of review. It is not necessary for the reasoning to go into all the relevant facts and points of law, inasmuch as the question whether the statement of reasons meets the requirements of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see, inter alia, judgment of 6 September 2006, *Portugal* v *Commission*, C-88/03, EU:C:2006:511, paragraph 88 and the case-law cited).

53 Moreover, if the contested measure clearly discloses the essential objective pursued by the institution, it would be excessive to require a specific statement of reasons for each of the technical choices made by the institution (judgment of 12 July 2005, *Alliance for Natural Health and Others*, C-154/04 and C-155/04, EU:C:2005:449, paragraph 134).

54 In the present case, the reasons regarding the choice of reference installations are substantiated sufficiently clearly in Decision 2011/278, particularly in recitals 2, 4, 6 and 8. They allow the reasons for adopting the decision to be understood as well as the objectives thereof, and also include a certain number of technical details.

55 Therefore, the Commission fulfilled the obligation to state reasons in accordance with Article 296 TFEU, given that the reasons for proceeding as it did were set out sufficiently clearly in Decision 2011/278.

56 It is clear from the foregoing that examination of the fourth question referred has revealed nothing that could affect the validity of Decision 2011/278.

Costs

57 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:

Examination of the questions referred has revealed nothing that could affect the validity 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/EC of the European Parliament and of the Council.

[Signatures]