



Brussels, 4 September 2014  
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MI 626  
IND 233  
ENER 382  
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## INFORMATION NOTE

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From: Legal Service  
To: Permanent Representatives Committee (Part 1)  
Subject: Case before the General Court of the European Union  
= T-284/14 Dyckerhoff Polska v European Commission

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1. In the abovementioned case the Applicant seeks the annulment of Commission 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<sup>1</sup>. The notice of the application was published in the Official Journal on 28 July 2014<sup>2</sup>.
2. In addition to its primary claims against the Commission, the applicant has also raised, pursuant to Article 277 TFEU, an objection of illegality of Article 10a(5) of Directive 2003/87/EC (the legal basis of the contested decision) in so far as it is possible to apply this provision without taking account of Article 10a(12) to (18) of Directive 2003/87/EC, Article 16 of Commission Decision 2011/278/EU and Commission Decision 2010/2/EU, which allegedly confirm the need to proceed in a specific manner with regard to those sectors and subsectors which are deemed to be exposed to a significant risk of carbon leakage. Against that provision, the applicant raised a plea of violation of the objectives of Directive 2003/87/EC, as well as that of an infringement of the principles of equal treatment and of proportionality.

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<sup>1</sup> OJ L 240 of 7.9.2013, p. 27.

<sup>2</sup> OJ C 245 of 28.7.2014, p. 20.

3. As an act of which the Council was co-author is being challenged, it is appropriate for the Council to intervene, pursuant to Article 115(1) of the Rules of Procedure of the General Court, in support of the form of order being sought by the Commission, in order to defend the validity of the contested provisions.
  4. The Director-General of the Council Legal Service has appointed Ms Marion SIMM, Ms Kristien MICHOEL and Mr Krzysztof PLEŚNIAK, legal advisers in the Legal Service, as the Council's agents for this case.
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