

Follow-up to Court Judgment of 19 January 2017, C-460/15 Schaefer Kalk (Validity of Article 49 and Annex IV point 10 of Commission Reg 601/2012)

Line to take

- It is for the German court that has requested the preliminary ruling and administration to proceed further with the concrete case.
- The Commission will study carefully the impacts of the ruling. However, it is important to emphasize that the judgment itself does not concern provisions of the ETS Directive but provisions relating to the monitoring and reporting of emissions set out in an implementing regulation.

Defensives

What are the impacts on the co-decision procedure on the ETS revision?

- There is no immediate impact on these ongoing negotiations.
- The Court found that certain rules set out in the Monitoring and Reporting Regulation are incompatible with the legal framework set by the ETS Directive. In the first instance, it requires these monitoring and reporting rules to be brought in line with this legal framework – not the other way around.

Does the ruling exempt CCU from the surrender obligation in the ETS Directive?

- The ruling concerns the very specific case of CO₂ transferred outside a lime producing installation and bound in a stable way in the production of precipitated calcium carbonate (PCC). It does not concern CCU technologies at large.
- CCU technologies are a promising avenue for decarbonisation in industrial sectors and merit due attention. The Commission supports further development of CCU technologies by providing a wide range of research and development grants through the EU research programmes as well as through the future Innovation Fund.
- Against the backdrop of the ruling, the technical experts will discuss the issue of transferred CO₂ bound in other products in a stable manner and that is where it links to CCU.

Background on the ruling

With this preliminary ruling, the Court annulled, from the outset, the provision of the monitoring and reporting Regulation prohibiting operators of lime producing installations to subtract, from the aggregate emissions of their installations, the amount of CO₂ transferred to another installation for the production of precipitated calcium carbonate (PCC), which is not an Annex I listed EU ETS activity.

In the coming months, the Berlin Administrative Court will give its judgment following this preliminary ruling and the German authorities will have to correct the situation of the applicant installation (Schaefer Kalk) accordingly. The German authorities will be faced with the challenge to verify and quantify how much CO₂ transferred outside the lime producing installation was bound in a stable way in the production of PCC, using information which Schaefer Kalk will have to provide on its past activities. Then they will need to determine the amount of allowances that do not need to be surrendered for this CO₂, as regards present and past activities that are appropriately documented.

The ruling does not concern the ETS Directive or the Benchmarking Decision but the Commission Regulation 601/2012 with respect to the provisions on transferred CO₂ annulled by the Court (Article 49 and Annex IV point 10). These provisions, however, concern more cases of CO₂ transferred to other processes than only for the production of PCC, including the production of ammonia where CO₂ can be used as feedstock in urea.