

## **CJEU Case Law on Renewable Energy**

**Case C-66/13, *Green Network SpA v Autorità per l'energia elettrica e il gas***  
26 November 2014

National support scheme for the consumption of electricity produced from renewable energy sources - Obligation of electricity producers and importers to feed into the national grid a certain quantity of electricity produced from renewable energy sources or, failing that, to purchase 'green certificates' from the competent authority - Evidence of such feeding into the grid requiring certificates to be submitted demonstrating the green origin of electricity produced or imported - Acceptance of certificates issued in a third State subject to the conclusion of a bilateral agreement between that third State and the Member State concerned or an agreement between the national grid manager and an equivalent authority of that third State - Directive 2001/77/EC –

External competence of the Community – Exclusive external competence precluding a national regimes which provides for the grant of exemption from the obligation to purchase green certificates owing to the introduction, onto the national consumer market, of electricity imported from a third State, by means of the prior conclusion, between the Member State and third State concerned, of an agreement under which the electricity thus imported is guaranteed as having been produced from renewable energy sources

**Case C-275/13, *Elcogás SA v Administración del Estado and Iberdrola SA***  
26 October 2014

Concept of 'intervention by the State or through State resources' – Electricity produced by coal-gasification processes - Offsetting the extra costs - Charges payable by final consumers of electricity – Funds financed through compulsory charges - Funds managed and apportioned in accordance with national law but managed by entities separate from the public authorities - Intervention through State resources - Applicability of Article 107(1) TFEU

**Joined cases C-204/12 to C-208/12, *Essent Belgium NV v Vlaamse Reguleringsinstantie voor de Elektriciteits - en Gasmarkt*.**  
11 September 2014

Regional support scheme providing for the issuance of tradable green certificates for facilities situated in the region concerned producing electricity from renewable energy sources - Obligation for electricity suppliers to surrender annually to the competent authority a certain quota of certificates - Refusal to take account of guarantees of origin originating from other Member States of the EU and from States which are parties to the EEA Agreement - Administrative fine in the event of failure to surrender certificates - Directive 2001/77/EC - Article 5

Free movement of goods - Article 34 TFEU - Articles 11 and 13 of the EEA Agreement - Directive 2003/54/EC - Article 3

Justification of the MEEQR - Promotion the use of renewable energy sources – Climate change

Proportionality of the MEEQR – Necessity of the territorial limitation requirement limiting the import of electricity produced abroad in order to attain the objective promoting the use of renewable energy sources

Proportionality of the obligation for suppliers to hold and surrender each year to the competent regulatory authority a certain number of green certificates corresponding to a proportion of the electricity that they have supplied, subject to having to pay an administrative fine – Traders must obtain certificates effectively and under fair terms – proportionality of the fine

**Case C-573/12, *Alands Vindkraft***  
1st July 2014

National support scheme providing for the award of tradable green certificates for installations producing electricity from renewable energy sources - Obligation for electricity suppliers and certain users to surrender annually to the competent authority a certain number of green certificates - Refusal to award

green certificates for electricity production installations located outside the Member State in question – Validity of the territorial limitation

Establishment by Directive 2009/28/EC of a common framework for the promotion of energy from renewable sources - A support scheme for green electricity production using green certificates has the necessary characteristics to be categorised as a ‘support scheme’ within the meaning of point (k) of the second paragraph of Article 2 and Article 3(3) of Directive 2009/28 – Scheme enabling the MS to meet their respective national overall targets – No intention to require Member States who opted for a support scheme using green certificates to extend that scheme to cover green electricity produced on the territory of another Member State

Free movement of goods - Directive 2009/28/EC does not entail exhaustive harmonisation – Applicability of Article 34 TFEU – Examination of the compatibility of the Swedish green certificates scheme with Article 34 TFEU - existence of a barrier to trade given that the legislation impedes the import of green electricity – Measure having equivalent effect to quantitative restrictions on imports (MEEQR)

Justification of the MEEQR - Promotion the use of renewable energy sources – Climate change

Proportionality of the MEEQR – Difficulty to determine the nature of electricity once it has been allowed into the transmission or distribution system – Necessity of the territorial limitation requirement limiting the import of electricity produced abroad in order to attain the objective promoting the use of renewable energy sources – Proportionality of other features of the Swedish legislation - Annual obligation for suppliers and certain users of electricity to hold and to surrender to the competent authority a certain number of electricity certificates – Bearing the additional costs of green electricity production

Proportionality of the fee to be paid by suppliers and users which do not meet their quota obligations – No excessive penalties

Principle of legal certainty - relevant factors – EU legislative context

**Case C-262/12, *Association Vent De Colère! Fédération nationale and Others v Ministre de l'Écologie et du Développement durable***

19 December 2013

Concept of ‘intervention by the State or through State resources’ - Wind-generated electricity - Obligation to purchase at a price higher than the market price - Offsetting in full the additional costs arising from the obligation to purchase green electricity - Charges payable by final consumers of electricity – Funds financed through compulsory charges - Funds managed and apportioned in accordance with national law but managed by entities separate from the public authorities - Intervention through State resources - Applicability of Article 107(1) TFEU

**Case C-195/12, *Industrie du bois de Vielsalm & Cie (IBV) SA v Région wallonne***

26 September 2013

Directive 2004/8/EC on the promotion of cogeneration based on a useful heat demand in the internal energy market - Scope - Cogeneration and high efficiency cogeneration - Article 7 - Regional support scheme providing for the grant of ‘green certificates’ to cogeneration plants - Grant of a larger number of green certificates to cogeneration plants processing principally forms of biomass other than wood or wood waste - Principle of equality and non-discrimination - Articles 20 and 21 of the Charter of Fundamental Rights of the European Union – Absence of discrimination

**Case C-262/12, *Association Vent De Colère! Fédération nationale and Others v Ministre de l'Écologie et du Développement durable***

19 December 2013

Compulsory purchase of electricity generated by wind-power installations - Obligation to purchase at a price higher than the market price - Sums intended to offset the additional costs arising from the obligation to purchase imposed on the undertakings collected from all final consumers of electricity - Offsetting in full – Compatibility with the State aid regime - Concept of ‘intervention by the State or through State resources’ within the meaning of Article 107(1) TFEU- Sums not permanently held by the Treasury, but constantly remaining under public control – Legal status of the Caisse des dépôts et consignations, a public body appointed to manage the sums

**Case C-2/10, Azienda Agro-Zootecnica Franchini sarl and Eolica di Altamura Srl v Regione Puglia**

21 July 2011

Directive 92/43/EEC - Conservation of natural habitats and of wild fauna and flora - Directive 79/409/EEC - Conservation of wild birds - Special areas of conservation forming part of the Natura 2000 European Ecological Network - Directives 2009/28/EC and 2001/77/EC - Renewable energy sources - Prohibition on the location of wind turbines not intended for self-consumption - No assessment of the environmental implications of the project - The prohibitions do not jeopardize the EU new and renewable forms of energy

**C-379/98, Preussen Elektra v. Schleswag**

13 March 2001

German legislation requiring electricity supply undertakings to purchase electricity at minimum prices and apportioning the resulting costs between those undertakings and upstream network operators – Compatibility with the State aid regime - Financial burden of the obligation to purchase enjoyed by wind-power installations was shared amongst a certain number of undertakings - Private undertakings not appointed by the State authorities to manage a State resource - private undertakings solely bound by an obligation to purchase by means of their own financial resources - No public resources contributing, directly or indirectly, to the financing of the aid – Compatibility with the free movement of goods

**C-213/96, Outokumpu Oy,**

2 April 1998.

Excise duty on electricity - Rates of duty varying according to the method of producing electricity of domestic origin - Flat rate for imported electricity – Infringement of Article 110 TFEU