



Press and Information

Court of Justice of the European Union

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Judgment in Joined Cases C-204/12 to C-208/12
Essent Belgium NV v Vlaamse Regulieringsinstantie voor de Elektriciteits-
en Gasmarkt

The Flemish green energy certificate scheme is compatible with EU law

Member States may provide incentives for electricity suppliers to support the production of green electricity by domestic producers

The Renewable Energy Directive¹ provides that Member States are to take appropriate steps to encourage greater consumption of electricity produced from renewable energy sources. They must also create a system of guarantees of origin in order to enable producers of green energy to demonstrate that the electricity they sell is produced from renewable energy sources. In so far as they prove the green origin of the electricity, those guarantees of origin are to be mutually recognised by the Member States.

A system of green certificates was established in the Flemish Region of Belgium. Producers who produce green electricity in that region may apply to the Flemish authorities for green certificates. Moreover, electricity suppliers must surrender to the regulatory authority each year a certain number of green certificates, failing which they must pay a fine.

In order to discharge its obligation regarding the green certificates, Essent, a Belgian electricity supplier, surrendered to the Flemish authorities guarantees of origin attesting to the production of green electricity in Denmark (and/or in Sweden), the Netherlands and Norway. The authorities did not accept those guarantees as green certificates, however, on the ground that they could be issued only for electricity produced in Flanders. A number of fines were also levied on Essent totalling approximately €1.5 million.

Taking the view that the decisions of the Flemish authorities infringe the directive and the principle of the free movement of goods, Essent brought a number of actions before the Belgian courts. The rechtbank van eerste aanleg te Brussel (Court of First Instance, Brussels, Belgium) asks the Court of Justice whether the Flemish scheme is compatible with EU law.

In its judgment today, the Court finds, first of all, that, in the directive, guarantees of origin and national support schemes are covered by different rules and that there is no link between them. In fact the directive provides specifically that the guarantee of origin scheme does not automatically give rise to entitlement to benefit from the national support mechanisms. The EU legislature did not intend to require Member States to extend that scheme to cover green electricity produced on the territory of another Member State. Moreover, national support mechanisms are to be used to help Member States meet their commitments of increases in national consumption of green electricity in their economies and must in principle lead to an increase in national production of green electricity. It follows that **the directive does not preclude the Flemish scheme of green certificates.**

Secondly, the Court observes that the Flemish scheme of green certificates **is capable of hindering imports of electricity**, especially green electricity, **from other Member States.** The fact that electricity suppliers such as Essent are, as a rule, required to purchase certificates on the basis of the electricity that they import if they wish to avoid having to pay a fine, combined with the possibility that Flemish producers of green electricity have of selling their certificates together with

¹ Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market (OJ 2001 L 283, p. 33).

the electricity they produce seems capable in practice of facilitating the opening of negotiations and the establishment of contractual relationships concerning the delivery of electricity produced in Flanders to suppliers, mean that **the scheme gives rise to a restriction on the free movement of goods.**

However, the Court finds that **that restriction is justified by the public interest objective consisting in promoting the use of renewable energy sources** with a view to protecting the environment and combating climate change. In that context, the Court recognises that, for the purposes of achieving the objective pursued, it is justified that the measures favouring the transition to green energy be aimed at the production stage rather than the consumption stage. Similarly, the Court acknowledges that the Flemish Region was justified in considering that, for those same purposes, it was appropriate to reserve the support scheme using green certificates exclusively to green electricity produced in the regional territory.

The Court points out, however, that the restriction arising from that support scheme may be justified only if it is actually possible for electricity importers to obtain green certificates under fair terms in a genuine market for certificates. Similarly, no excessive penalties must be imposed on traders who have not fulfilled their green certificate quota obligation.

In those circumstances, the Court holds that **the Flemish scheme of green certificates is, in principle, compatible with the principle of the free movement of goods.**

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Christopher Fretwell ☎ (+352) 4303 3355