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Court of Justice of the European Union

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Judgment in Case C-242/17

Legatoria Editoriale Giovanni Olivotto (L.E.G.O.) SpA v Gestore dei servizi energetici (GSE) SpA and Others

The requirement to submit sustainability certificates imposed by Italy on intermediaries which do not take physical possession of the bioliquids which are the subject of the transaction in which those intermediaries are involved complies with EU law

Access to the green certificate (GC) incentive scheme by a company using using bioliquids for a thermal energy plant is subject to certain conditions

The company Legatoria Editoriale Giovanni Olivotto (L.E.G.O.) owns a printing office in Italy which has a thermal energy plant fuelled by a bioliquid (palm oil). As that plant was recognised as being fuelled by renewable energy sources, L.E.G.O. received public funding for the period 2012-2014. That funding was, however, withdrawn by the Italian authorities as the intermediary company responsible for the purchase of the bioliquid on behalf of L.E.G.O. from a third-party supplier failed to submit sustainability certificates, in spite of the fact that those certificates had already been submitted by the third-party supplier, which had signed up to the voluntary 'ISCC' (*International Sustainability and Carbon Certification*) control system.

L.E.G.O. challenged the decision of the Italian authorities before the national administrative courts. Against that background, the Consiglio di Stato (Council of State, Italy), before which the case was brought at last instance, asks the Court of Justice whether EU law¹ precludes national legislation which imposes requirements on economic operators which are specific, different and more extensive than those imposed by a voluntary sustainability certification scheme, such as the 'ISCC' system. The Consiglio di Stato also asks the Court whether EU law precludes national legislation imposing a national bioliquids sustainability verification system under which all the economic operators involved in the supply chain of the product, even when they are intermediaries which do not take physical possession of the batches of bioliquids, are bound by requirements relating to certification, communication and the provision of information imposed by that system.

By today's judgment, the Court answers those questions in the negative.

The Court recalls, first, that Directive 2009/28 comprehensively harmonised the sustainability criteria which must be complied with in respect of biofuels and bioliquids² in order for them to be regarded as renewable energy. Thus, Member States may not, for the purposes of the directive, refuse to take into account, on other sustainability grounds, biofuels and bioliquids which meet the sustainability criteria laid down in the directive.

As regards verification of whether the sustainability criteria in respect of biofuels and bioliquids have been complied with, the Court observes that the directive obliges Member States to require

¹ Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ 2009 L 140, p.16), read in conjunction with Commission Implementing Decision 2011/438/EU of 19 July 2011 on the recognition of the ISCC (*International Sustainability and Carbon Certification*) system for demonstrating compliance with the sustainability criteria under Directives 2009/28/EC and 2009/30/EC of the European Parliament and of the Council (OJ 2011 L 190, p.79).

² According to the directive, 'biofuels' means liquid or gaseous fuel for transport produced from biomass, whereas 'bioliquids' means liquid fuel for energy purposes other than for transport, including electricity and heating and cooling, produced from biomass.

economic operators to use a mass balance system. Since that method of sustainability verification has not been the subject of comprehensive harmonisation, it can be implemented by a national system established by each Member State or by voluntary national or international systems recognised by the Commission, such as the 'ISCC' system.

The Court concludes that, since the 'ISCC' system concerns (at least up to the adoption of Directive 2015/1513³) biofuels and not bioliquids, Italy was free to introduce a national certification system that was stricter than the 'ISCC' system' in order to establish the sustainability of bioliquids.

As regards the second question, the Court first notes that the directive does not define the term 'economic operator'. Therefore, Member States retain, under the current state of harmonisation of EU law, a broad margin of discretion in that regard. In the present case, **Italy is free to categorise intermediaries (including those which do not take physical possession of those products) as 'economic operators', in order to ensure, in accordance with the requirements of the directive, that batches of bioliquids are traceable throughout the supply chain, thus allowing a better control of their production and their distribution in order to reduce the risk of fraud.**

Finally, the Court observes that the requirement to submit sustainability certificates imposed by Italy on intermediaries which do not take physical possession of the bioliquids which are the subject of the transaction in which those intermediaries are involved makes the importation of bioliquids into Italy more difficult. However, the Court considers that that limitation on the free movement of goods (Art. 34 TFEU) **is justified by the objectives of protecting the environment and combating fraud.**

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 EU 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.

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³ Directive (EU) 2015/1513 of the European Parliament and of the Council of 9 September 2015 amending Directive 98/70 and amending Directive 2009/28 (OJ 2015 L 239, p.1), which entered into force on 15 October 2015 and introduced the possibility of certifying the sustainability of bioliquids through voluntary systems.