

EXTRACT FROM ISSUE 654 / JUNE 24, 2013

ECJ opinion challenges green subsidy systems

A legal opinion from European Court of Justice Advocate-General Yves Bot supports the view that national subsidy systems that bar foreign-produced renewables are in breach of EU rules on the free movement of goods, Guarantee of Origin organization RECS International said June 18.

The general principles of the ECJ opinion, issued May 8 in a case involving Essent Belgium and Flemish regulator the VREG, “lie in the fact that the free transfer of goods, renewable electricity included, is protected under the European treaty and national support schemes discriminate against foreign-made renewables production,” RECS International’s Secretary General Peter Niermeijer told Platts.

In an article on the opinion, Peter Willis of legal firm Bird & Bird commented that, while the question referred to the ECJ related to GOs under Article 5 of the Renewables Directive, “the principles set out in the Advocate-General’s opinion seem to be capable of applying equally to the renewable support mechanisms established by many Member States.”

The Advocate-General concluded that, since environmental protection is an EU-wide policy, it was appropriate to take account of the possible cost benefits of cross-border movements of green electricity.

Willis said the Advocate-General’s comments on the development of an EU-wide electricity market, and on the value of GOs as a means of ensuring that support mechanisms are applied correctly, “seem to indicate that certain national renewables support regimes should be opened to renewable generation based in other Member States. If so, that would be a significant development in the creation of an EU-wide renewables market,” he said.

There was no guarantee that the ECJ would follow the Advocate-General’s opinion on this issue, Willis said. “While it generally does, realization of the potential impact of a ruling along these lines may encourage the Court to seek to dispose of the reference in some way that avoids making a clear ruling on this issue. Its judgment in a few months’ time will be eagerly awaited, and studied keenly,” he said.

Huge implications

Given that almost all EU Member States do not recognize foreign-made renewables in their national subsidy mechanisms (Sweden is the partial exception – it has a

joint green certificate system with Norway), the consequences were significant if the Advocate-General’s opinion was adopted by the ECJ, RECS International’s Niermeijer said.

“The next step is that everybody will export renewables to the German market, as it is the best market for feed-in tariff support,” he said. “The German government would have no choice but to immediately call a halt to the system for everybody, including national producers.”

While nobody wanted such a crisis, the removal of national FiT systems was desirable in the longer term, Niermeijer said. As innovative green projects became more cost efficient, “you need a more market-based system – there is no disagreement on this. ‘Europeanization’ is the new word – standardization, harmonization – it all comes down to the same thing: Free to trade.”

GOs were well placed to play a key role in a future pan-European market for renewables, Niermeijer said. “To identify electricity correctly across the EU you need a certification system, and that is the Guarantee of Origin. The GO has one purpose – to inform the consumer where the electricity is coming from.

Green certificates are different – they are support certificates that are used for target counting in national quota systems like the UK’s Renewables Obligation. Sweden, Belgium and Italy also have quota systems.”

RECS International is lobbying Member States to standardize GO certificates using the European Energy Certificate System (EECS), ensuring a robust, reliable GO can be transferred from one country to another without double counting or other problems.

“That is important for international trade – allowing you, for instance, to produce renewable energy in Sweden, export it with the GO to the Netherlands and consume it there by cancellation of the GO in the Netherlands,” Niermeijer said.

Encouraging growth

This year Germany, France and Italy have joined the EECS system – the Scandinavians are already in. “Hopefully soon we’ll get Spain, Portugal and the UK,” said RECS’ Jared

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Braslawsky. "It's a relatively new market, but even without non-standardized REGOs in the UK or Spanish GOs included in the statistics, there was market growth of more than 30% year-over-year for the last eight years."

Overall trade in GOs has gone from around 200 GWh in 2001 to in excess of 220 TWh last year, driven by commercial businesses that need proof of renewable consumption to meet voluntary corporate social responsibility targets – a trend that has been mirrored in the US, Braslawsky said.

Growing GO trade was having interesting effects on consumer perceptions, Niermeijer said. Norway is a net exporter of electricity and of its hydro-sourced GOs. The electricity it imports, meanwhile, has a rather different carbon footprint.

"If, as a consumer, you don't track your electricity with the GO then you get the residual mix, which is likely to include nuclear and fossil-fired sources," he said. "Under disclosure law, suppliers have to inform consumers of the mix they receive. Norwegian consumers are really confused and concerned by what they see, because the residual mix includes nuclear waste."

As long as disclosure is well regulated between markets, this is a healthy reaction as it will drive consumer demand for a cleaner mix and therefore for GOs, Niermeijer said.

Joint projects

While the official was realistic on the chances of fundamental reform of the Renewables Directive, the option for joint projects was a more realistic goal if regulations changed. "At the moment, if the Dutch government wants to buy a very cost-efficient project in the south of France it can only do so with the permission of the French government, which will likely want to keep it for itself. Get rid of the permission of the host government and you have the free market again – that is what we want."

For countries like Germany and the Netherlands with large carbon baselines of almost 500 grams CO₂ per kWh, "if you purchase the grid mix, you have a huge carbon footprint," Niermeijer said. "But if you can cooperate with lower-carbon import markets, you reduce that footprint. After 2020, that will be the driver – you won't need support systems. Those commercial companies and households that make a dedicated choice to go green must be supported."

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