

**Parties to the main proceedings**

*Applicant:* Essent Belgium NV

*Defendant:* Vlaamse Reguleringsinstantie voor de Elektriciteits- en Gasmarkt (VREG)

*Other Party:* Vlaamse Gewest

Vlaamse Gemeenschap

**Questions referred**

1. Is a national rule, such as that embodied in the Flemish Decreet van 17 juli 2000 houdende de organisatie van de elektriciteitsmarkt (Decree of 17 July 2000 on the organisation of the market in electricity), as implemented by the Besluit (Decision) of the Flemish Government of 5 March 2004, as amended by the Besluit of the Flemish Government of 25 February 2005 on the promotion of the generation of electricity from renewable energy sources, where

— an obligation is imposed on the suppliers of electricity to final customers connected to the distribution network or the transmission network, to submit a certain number of green certificates annually to the Regulatory Authority (Article 23 of the aforementioned Decree);

— an administrative fine is imposed by the Vlaamse Reguleringsinstantie voor de Elektriciteits- en Gasmarkt (VREG) on the suppliers of electricity to final customers connected to the distribution network or the transmission network when the supplier has not submitted a sufficient number of green certificates to fulfil a quota obligation which has been imposed in respect of green certificates (Article 37(2) of the aforementioned Decree);

— the Regulatory Authority cannot or will not take into account any guarantees of origin originating from Norway and the Netherlands, and that being in the absence of implementing measures on the part of the Flemish Government, which has acknowledged the equality or equivalence of those certificates (Article 25 of the aforementioned Decree and Article 15(1) of the Besluit of 5 March 2004), without that equality or equivalence being investigated by the Regulatory Authority in concrete terms;

— in fact, during the whole time that the Decree of 17 July 2000 was in force, only certificates for the production of green energy generated in the Flemish Region were taken into account when ascertaining whether the quota obligation had been fulfilled, whereas for the suppliers of electricity to final customers connected to the distribution network or transmission network there was

no possibility whatsoever of demonstrating that the guarantees of origin submitted met the condition of the existence of equal or equivalent guarantees regarding the granting of such certificates,

compatible with Article 34 of the Treaty on the Functioning of the European Union and Article 11 of the EEA Agreement and/or Article 36 of that Treaty and Article 13 of the EEA Agreement?

2. Is a national rule as referred to in subquestion 1 above compatible with Article 5 of the then Directive 2001/77/EC <sup>(1)</sup> 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?

3. Is a national rule as referred to in subquestion 1 above compatible with the principle of equal treatment and the prohibition of discrimination as embodied inter alia in Article 18 of the Treaty on the Functioning of the European Union and Article 3 of the then Directive 2003/54/EC <sup>(2)</sup> of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC?

<sup>(1)</sup> OJ 2001 L 283, p. 33.

<sup>(2)</sup> OJ 2003 L 176, p. 37.

**Reference for a preliminary ruling from the Rechtbank van eerste aanleg te Brussel (Belgium) lodged on 30 April 2012**  
— **Essent Belgium NV v Vlaamse Reguleringsinstantie voor de Elektriciteits- en Gasmarkt (VREG)**

(Case C-205/12)

(2012/C 227/13)

*Language of the case: Dutch*

**Referring court**

Rechtbank van eerste aanleg te Brussel

**Parties to the main proceedings**

*Applicant:* Essent Belgium NV

*Defendant:* Vlaamse Reguleringsinstantie voor de Elektriciteits- en Gasmarkt (VREG)

*Other Party:* Vlaamse Gewest

### Questions referred

1. Is a national rule, such as that embodied in the Flemish Decreet van 17 juli 2000 houdende de organisatie van de elektriciteitsmarkt (Decree of 17 July 2000 on the organisation of the market in electricity), as implemented by the Besluit (Decision) of the Flemish Government of 5 March 2004, as amended by the Besluit of the Flemish Government of 25 February 2005 on the promotion of the generation of electricity from renewable energy sources, where

— an obligation is imposed on the suppliers of electricity to final customers connected to the distribution network or the transmission network, to submit a certain number of green certificates annually to the Regulatory Authority (Article 23 of the aforementioned Decree);

— an administrative fine is imposed by the Vlaamse Reguleringsinstantie voor de Elektriciteits- en Gasmarkt (VREG) on the suppliers of electricity to final customers connected to the distribution network or the transmission network when the supplier has not submitted a sufficient number of green certificates to fulfil a quota obligation which has been imposed in respect of green certificates (Article 37(2) of the aforementioned Decree);

— it is expressly provided that guarantees of origin from other countries may be submitted under certain conditions in order to fulfil the quota obligation (Article 15c(2) of the Besluit of the Flemish Government of 5 March 2004, as applicable in this case);

— the Regulatory Authority cannot or will not take into account any guarantees of origin originating from Norway and Denmark, and that being in the absence of implementing measures on the part of the Flemish Government, which has acknowledged the equality or equivalence of those certificates (Article 25 of the aforementioned Decree and Article 15c(2) of the Besluit of 5 March 2004), without that equality or equivalence being investigated by the Regulatory Authority in concrete terms;

— in fact, during the whole time that the Decree of 17 July 2000 was in force, only certificates for the production of green energy generated in the Flemish Region were taken into account when ascertaining whether the quota obligation had been fulfilled, whereas for the suppliers of electricity to final customers connected to the distribution network or transmission network there was no possibility whatsoever of demonstrating that the guarantees of origin from other Member States of the European Union met the condition of the existence of equal or equivalent guarantees regarding the granting of such certificates,

compatible with Article 34 of the Treaty on the Functioning of the European Union and Article 11 of the EEA Agreement and/or Article 36 of that Treaty and Article 13 of the EEA Agreement?

2. Is a national rule as referred to in subquestion 1 above compatible with Article 5 of the then Directive 2001/77/EC <sup>(1)</sup> 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?

3. Is a national rule as referred to in subquestion 1 above compatible with the principle of equal treatment and the prohibition of discrimination as embodied inter alia in Article 18 of the Treaty on the Functioning of the European Union and Article 3 of the then Directive 2003/54/EC <sup>(2)</sup> of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC?

<sup>(1)</sup> OJ 2001 L 283, p. 33.

<sup>(2)</sup> OJ 2003 L 176, p. 37.

### Reference for a preliminary ruling from the Rechtbank van eerste aanleg te Brussel (Belgium) lodged on 30 April 2012 — Essent Belgium NV v Vlaamse Reguleringsinstantie voor de Elektriciteits- en Gasmarkt (VREG)

(Case C-206/12)

(2012/C 227/14)

*Language of the case: Dutch*

#### Referring court

Rechtbank van eerste aanleg te Brussel

#### Parties to the main proceedings

*Applicant:* Essent Belgium NV

*Defendant:* Vlaamse Reguleringsinstantie voor de Elektriciteits- en Gasmarkt (VREG)

*Other Party:* Vlaamse Gewest

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