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The ECJ ruling in *Ålands Vindkraft AB v Energimyndigheten* is a missed opportunity to help Europe find a more efficient way to support RES-E and restore the integrity of the single electricity market

In its ruling in *Ålands Vindkraft AB v Energimyndigheten (C-573/12)* issued on Tuesday, the European Court of Justice (ECJ) found that the Swedish green certificate scheme is compatible with EU law. The case was brought in Sweden and referred by the competent Swedish court to Luxembourg. The referring court asked the ECJ whether a support scheme for renewable energy, which excludes foreign generation sources from participating in the scheme, such as the Swedish green certificate scheme, infringes EU rules guaranteeing free trade within the internal market. The ECJ considered, in essence, that a restriction of the internal market rules is justified based on current EU law, notably given that the EU has not harmonised national support schemes for green electricity. We consider the judgment, which contradicts the Opinion of Advocate General Bot issued earlier this year, to be a missed opportunity to help Europe find a more efficient way to support RES-E and restore the integrity of the internal electricity market (IEM).

This case is closely related to the earlier ECJ ruling in *PreussenElektra AG v Schleswag AG (Case C-379/98)*, in which the Court allowed the exclusion of external generation sources from the German feed-in tariff scheme, based on overriding public interest reasons. The Court's rationale fifteen years ago was based on the then low penetration of RES-E in Germany, as well as on the immaturity of the IEM and difficulties in tracking the origin of imported electricity at that time. These circumstances have changed radically in the meantime, as also recognised by the ECJ, and we regret that the dramatic shift has not been adequately reflected in the *Ålands Vindkraft*

EFET urges the European Commission and the Council of Energy Ministers now to consider alternative measures to put the European wholesale electricity market on a more sustainable path. DG ENER still needs to consider the merits of reforming EU Directive 2009/28/EC on renewable energy, to deter national compartmentalisation of financial support for renewable generators and to help integrate RES-E sources into the IEM at the wholesale level. The consumption of renewable electricity in the EU can be promoted most efficiently, if renewable power generators and suppliers exporting to another Member State would be allowed to participate in the support scheme of that Member State. We believe that hoping this efficient outcome will be achieved through the medium of cooperation mechanisms belies experience and is naïve.

In addition, DG COMP should remain resolute in applying rigorously the new State Aid Guidelines on energy and the environment to its evaluation of financial support for RES-E output. In particular, any obligation of energy consumers to pay nationally determined RES-E levies on volumes of electricity they import from another Member State must be questioned in the light of EU free trade rules.

A harmonised EU-wide scheme would help the long-term stability of renewable promotion schemes more effectively than national promotion schemes, which, in the past, have even experienced retro-active cuts. Harmonisation would be key, if EU Member States are serious about the transformation to a RES-based electricity system.

The broader implications of this ECJ judgment are still to be evaluated. EFET will be resuming dialogues with the European Commission, CEER, ENTSO-E, Europex and EWEA, amongst others, regarding the merits of revising EU legislation, as well as national measures.

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