



EEL News Service

Issue 2014/08 of 29 October 2014

Note to Subscribers:

The EEL News Service will be changing its format the coming months. Next to the information you are used to receiving, we will add links to more information that might be of interest to you. This issue already contains some examples of the manner in which we will be expanding our work. We hope you appreciate this extra service and look forward to your feedback.

PS For the very latest news, you can follow us on [Twitter](#).

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Case Law

Import restrictions green energy permitted

ECJ judgment Joined Cases C-204/12 to C-208/12, [Essent Belgium NV v Vlaamse Reguleringsinstantie voor de Elektriciteits - en Gasmarkt](#), 11 September 2014

The ECJ has confirmed its findings in [Ålands Vindkraft AB v Energimyndigheten](#) that measures representing a quantitative restriction on imports of green energy or having equivalent effect may be permitted for environmental reasons. This question had arisen in a case in which energy supplier Essent Belgium NV contested a series of fines imposed on it by the Flemish Regulatory Authority for the Electricity and Gas Market for its failure to meet its green energy quota. Essent had sought to meet its quota through the submission of “guarantees of origin” that attested to renewable energy production in other Member States, but according to the Flemish Decree on the Organisation of the Electricity Market (2000) only certificates that had been issued to producers of green electricity established in the Flemish Region could be submitted. Despite the fact that this law could have the effect of impeding imports of green electricity, and that such measures are in principle incompatible with EU legislation on the free movement of goods, the Court noted that such restrictions may be justified on one of the public interest grounds listed in Article 30 of the Treaty establishing the European Community (EC) or by overriding requirements. The Court reaffirmed that protection of the environment, to which the promotion of renewable energy production contributes, may represent such an overriding requirement, noting further that this objective contributes to the protection of the health and life of humans, animals and plants, which is among the public interest grounds listed in Article 30 EC (now Art. 36 TFEU).

See also:

[Opinion](#) of Advocate-General Bot (who came to a different conclusion than the Court), 8 May 2013

Inside Energy & Environment Blog: [EU Court Confirms Support for Protective Local Green Energy Schemes: Will This Approach Spill Over to Other National Environmental Measures?](#), 29 September 2014

No cost-pricing for all water services

ECJ judgment Case C-525/12, [Commission v. Germany](#), 11 September 2014

The case revolved around disagreement concerning the interpretation of the term ‘water services’ between Germany and the European Commission in the context of [Directive 2000/60/EC](#) (the Water Framework Directive - WFD), which aims to maintain and improve the aquatic environment of the EU. Article 9 of this Directive holds that Member States must take into account the principle of recovery of costs of water services, including environmental and resource costs, in accordance with the polluter pays principle. This should *inter alia* provide users with adequate incentives to use water resources efficiently. According to Germany’s interpretation of ‘water services’, such services are restricted to the supply of water and the collection, treatment and elimination of waste water. Impoundments, *inter alia* for the purposes of hydroelectric power generation, navigation and flood protection, do not come within the scope of water services. The Commission considered this interpretation to be too restrictive, and argued that that as a result of Germany’s interpretation, some water services remain, incorrectly, outside the scope of Germany’s obligation to take account of recovery of costs of water services under Article 9 of the WFD. The Court did not put forward a decisive interpretation of the definition of ‘water services’. Rather, it considered that, contrary to what the Commission maintained, Member States are not required to introduce cost-pricing for all water services if this does not compromise the purposes and objectives of the WFD; it is one of several instruments available to Member States in order to achieve rational water use. In the absence of other grounds of complaint, the lack of pricing for certain water activities therefore does not establish that Germany has failed to fulfil its obligations under the Water Framework Directive. The Commission’s action was dismissed.

See also:

Advocate General Jääskinen’s [Opinion](#), 22 May 2014

Criminal liability EU vessel fishing in Moroccan waters

ECJ judgment Case C-565/13, [Ahlström and Others](#), 9 October 2014

This case concerned the interpretation of the [Fisheries Partnership Agreement](#) between the EU and the Kingdom of Morocco. Criminal proceedings had been instituted against two fishery companies accused of carrying out professional fishing activities off the coast of Western Sahara with vessels registered in Sweden despite those vessels not possessing the necessary permits as required by this Fisheries Agreement. The accused denied their criminal liability, claiming that the fishing vessels in question had been leased, through a ‘bareboat’ charter, to a Moroccan company, which possessed fishing rights in Moroccan territorial waters. The accused contended that the Fisheries Agreement does not apply to leasing activities. The Court found otherwise, since the Fisheries Agreement does not provide for any exceptions to the rule that authorisation from the European Commission is required for European ships to fish in Moroccan waters. It noted *inter alia* that such a possibility could increase access by Community vessels to certain fishing zones, thereby intensifying exploitation of resources there without the control of EU authorities. This would run contrary to one of the Fishery Agreement’s aims, which is to introduce responsible fishing to Moroccan fishing zones.

More case law:

ECJ Judgments Case C-611/12 P and Joined Cases C-12/13 P and C-13/13 P, [Giordano v Commission](#) and [Buono and Others v Commission and Syndicat des thoniers méditerranéens and Others v Commission](#)

ECJ Press Release, [The Commission did not act unlawfully by prohibiting French fishermen in 2008](#)

[from fishing bluefin tuna before the end of the validity of fishing licences](#), 14 October 2014

Opinion of Advocate General Cruz Villalón: [Case C-611/12 P](#) and [Cases C-12/13 P and C-13/13 P](#) (in French)

New Commission

Cañete and Vella confirmed, sustainability promises made

The European Parliament has voted in support of the new European Commission structure and key posts proposed by Commission President-elect Jean-Claude Juncker in a plenary vote on 22 October. Miguel Arias Cañete and Karmenu Vella have thereby been confirmed as the new Commissioners for *Climate and Energy* and *Environment, Maritime Affairs and Fisheries* respectively. Both nominations, as well as Juncker's decision to merge the climate and energy and environment and fisheries portfolios are controversial, and have sparked concern that the Juncker Commission will place a low priority on sustainability issues. The Spanish Cañete is a former director of two oil companies. His nomination attracted strong opposition from green groups due to feared conflict of interest, and an [online campaign](#) calling for his nomination to be rejected attracted almost 600,000 signatures. Criticism against Vella, the former Minister of Public Works, Industry and Tourism in Malta include Malta's non-compliance with the EU's Birds Directive, and the fact that Juncker has asked for a review of the Birds and Habitats Directives, which many see as a euphemism for 'watering down'. Juncker has responded to concerns about the new Commission's approach to sustainability – including those expressed in [a letter](#) from European Parliament President Martin Schulz – by adding 'sustainable development' to the portfolio of First Vice President designate Frans Timmermans and by [underlining](#) the Commission's support for this area. Nevertheless, [green groups remain concerned](#). The Juncker Commission will take office on 1 November.

See also:

European Policy Centre, [Energy and climate – What is the new European Commission thinking?](#), 30 September 2014

Euractiv, [Cañete safe after EPP-Socialist deal, but Bratušek is out](#), 8 October 2014

Euractiv, [Vella elusive on fisheries and environmental policy](#), 30 September 2014

European Voice, [MEPs win sustainability concession](#), 9 October 2014

European Voice, [Key dates for the formation of the new Commission](#)

Climate and Energy

European Council agrees on new Climate and Energy Policy Framework

After intense negotiations that ran late into the night of 24 October, the European Council has reached agreement on the EU's [2030 Climate and Energy Policy Framework](#). EU leaders have committed to cut greenhouse gas emissions by at least 40% compared to 1990 levels by 2030, and to raise the EU's share of renewables in its energy mix by 27% and improve energy efficiency by 27% compared to 1990 levels. The energy efficiency target has been watered down from the 30% increase [proposed by the](#)

[European Commission](#) in January, and is not legally binding on an EU or Member State level. It will be reviewed in 2020 with a 30% target in mind. The EU's new renewables target is binding on EU-level but not at a national level following pressure from the United Kingdom. Eastern European Member States and Poland in particular also obtained important concessions in return for support for the agreement, and will be granted hundreds of millions of euros of free emissions allowances under the EU's Emissions Trading System. The Framework is an important political signal on the road to a global climate agreement in Paris in 2015, but contains a clause that could seemingly trigger its review if other countries fail to commit to ambitious targets.

See also:

[Statement by EU Commissioner Connie Hedegaard on 2030 agreement by European Council](#)

More on climate and energy:

[Commission adopts proposal on calculation methods and reporting requirements for Fuel Quality Directive](#)

[Consumer group sues over 'misleading' car emissions tests](#)

Andrei Marcu, [The 2015 Climate Agreement: What's in it for the EU?](#), 17 October 2014

Nature

Plant breeders seek annulment of Nagoya Protocol regulation

Several German and Dutch plant breeding companies have brought an action before the European Court of Justice requesting the annulment of [Regulation 511/2014](#) on compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization in the Union, which entered into force in June 2014.

See also:

Council of the European Union, [Ackermann Saatzucht GmbH & Co.KG and Others v European Parliament and Council of the European Union](#), 2 October 2014

Council of the European Union, [ABZ Aardbeien Uit Zaad Holding BV and Others v European Parliament and Council of the European Union](#), 2 October 2014

Whaling and Fisheries

Latest Updates:

[EU leads international demarche against whaling by Iceland](#)

[3337th Agriculture and Fisheries Council meeting](#)

[Proposal for a Council Implementing Decision amending the list of non-cooperating third countries in fighting IUU fishing pursuant to Regulation \(EC\) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing](#)

[Commission Implementing Decision of 14 October 2014 identifying a third country that the Commission considers as a non-cooperating third country pursuant to Council Regulation \(EC\) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing](#)

[Notice of information of the termination of the demarches with third countries notified on 15 November 2012 of the possibility of being identified as non-cooperating third countries pursuant to Council Regulation \(EC\) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing](#)

[Illegal fisheries: green cards for five countries, but red card for Sri Lanka](#)

[Question and Answers on the EU's fight against illegal, unreported and unregulated \(IUU\) fishing](#)

[Improved fisheries management thanks to robust cooperation with the EU](#)

European Parliament briefing, [Illegal, unreported and unregulated fishing: Sanctions in the EU](#), July 2014

Air Quality

Latest Updates:

[European Parliament study: EU Air Quality Policy and WHO Guideline Values for Health](#)

Waste

Latest Updates:

[New Commission Communication on circular economy](#)

Upcoming Events

EFFACE Conference on Smart Enforcement

The EU-funded European Union Action to Fight Environmental Crime (EFFACE) project will hold a conference on "Smart Enforcement: How to Target Environmental Law Enforcement Efforts in Times of Crisis" on 3 November 2014 in Brussels.

The half day event is being organised in co-operation with the Flemish High Enforcement Council for the Environment and will include two sessions:

- The Theoretical and Empirical Case for Smart Enforcement
- How to Make Enforcement against Environmental Crime Smarter – Practical Perspectives

Speakers at the conference will include European Union officials, senior university researchers and legal experts in the field of environmental crime.

For more information and to register for the conference, please [click here](#).

Date: 3 November 2014, 13:30 – 19:00

Venue: Thon Hotel Brussels City Centre, Avenue du Boulevard 17, 1210 Brussels

International Seminar: Facts and Effects of Global Climate Policy. Carbon Markets and Shale Gas in the EU, the US and China

Organised by the Leuven Centre for Global Governance Studies. Registration (before 30 October): Annemarie.reynaers@soc.kuleuven.be .

Date: 4 November 2014, 10:00-12.30

Venue: Raadkamer (DV00.11), Faculty of Law, Tiensestraat 41, Leuven, Belgium

The Road to Lima: Climate Governance, Adaptation and Technological Responses

Organised by The Hague Institute for Global Justice. For more information and to register, please click [here](#). Registration required before 5 November.

Date: 6 November, 9:30-16:30

Venue: 10 Sophialaan, 2514 JR, The Hague

Seminar Extraterritoriality and Environment

During this seminar various international scholars will provide insight into the question of environmental extraterritoriality in the context of WTO law and the European Union's external environmental relations. Topics to be examined include Animal Welfare Trade Measures: Lessons Learned from the EC – Seal Products WTO Case; the EU and the Environment of Third States; EU Global Climate Change Leadership, The Inclusion of Aviation in the EU Emissions Trading Scheme (EU ETS) and the Potential Expansion of the EU ETS to the Shipping Industry.

The full programme is available [here](#). For registration and further info: T.Ditvoorst@uu.nl.

Date: 8 December 2014, 13:15 – 18:10

Venue: Law Faculty Utrecht University, Raadzaal Achter Sint Pieter 200, 3512 HT Utrecht

The EU and China: Green and Smart Cities

[More information](#)

Date: 16-17 December 2014

Venue: Brussels, Belgium

Colofon

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