



SVEA COURT OF APPEAL
Department 02
Section 020113

MINUTES
2020-10-09
Presented in
Stockholm

THE COURT

Appellate judges Ulrika Beergrehn, Maj Johansson, reporting judge, and Eva Edwardsson

REPORTING CLERK AND KEEPER OF THE MINUTES

Reporting clerk Anders Lundberg

PARTIES

Claimant

Kingdom of Spain

Counsel: Members of the Swedish bar (Sw. *Advokaterna*) James Hope, Mattias Rosengren and Cecilia Möller Norsted

Advokatfirman Vinge KB

Box 1703

SE-111 87 Stockholm

Respondent

1. Athena Investments A/S (formerly Greentech Energy Systems A/S), 36696915

2. Foresight Luxembourg Solar 1 S.à.r.l., B0146200

3. Foresight Luxembourg Solar 2 S.à.r.l., B0151603

4. GWM Renewable Energy II S.r.l., RM – 1305410

5. GWM Renewable Energy I S.p.A., RM – 1305360

Counsel 1-5: Members of the Swedish bar (Sw. *Advokaterna*) Fredrik Andersson and Jakob Ragnwaldh

Mannheimer Swartling Advokatbyrå AB

Box 1711

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IN THE MATTER OF

Challenge and invalidity of an arbitral award; presently the question of written observations by the European Commission etc.

The European Commission has in a letter received by the Court of Appeal on 11 March 2020 informed the court of its intention to – with reference to Article 29(2) in the Council Regulation 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of [orig. p. 2] the Treaty on the Functioning of the European Union –submit a written observations to the Court on its own

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initiative. The Commission has also requested permission from the Court of Appeal to submit oral observations in forthcoming oral hearings in the case.

The Commission has requested that the Court of Appeal set a time limit for the submission of its written observations.

The Kingdom of Spain has welcomed written observations and stated that it has no objection to the Commission's request to submit oral observations at a forthcoming main hearing.

The respondents have objected to the Commission's request, stating that there is no legal basis for either written or oral observations.

The Kingdom of Spain has requested that the Court of Appeal request a preliminary ruling from the CJEU [the Court of Justice of the European Union] to, *inter alia*, clarify the various issues of EU law in the case. The Kingdom of Spain has proposed a number of questions to be referred to the CJEU.

The respondents have objected to the request.

After a presentation of a report on the issue, the Court of Appeal makes the following

DECISION (to be issued on 2020-10-26)

1. The European Commission is presented with the opportunity to submit written observations by 18 December 2020 at the latest.
2. The Court of Appeal denies the request that a preliminary ruling be requested from the CJEU.

[orig. p. 3] *Reasons for the decision*

The Commission's right to submit written observations to a national court follows directly from Article 29(2) in the Council Regulation laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union and is not conditioned upon permission by the court.

As regards the Commission's request to submit oral observations at forthcoming hearings, the Court of Appeal concludes that the nearest equivalent to such observations is an expert opinion (*cf.* Government Bill 2003/04:80 p. 60 *et seq.*). Consequently, oral observations could only be submitted at a main hearing. The Court of Appeal is yet to determine whether to hold a main hearing in the case

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and therefore intends to decide on the Commission's request to submit oral observations after the Court of Appeal has rendered a decision on the continued proceedings of the case.

What has been presented in the case so far does not currently motivate a request for a preliminary ruling from the CJEU.

The decision may not be appealed separately.

Anders Lundberg
Minutes presented/