

SVEA COURT OF APPEAL
Department 02
Division 020104

MINUTES
19 May 2020
Report in Stockholm

Case document no. 151
Case No. T 4658-18

THE COURT

Senior Judges of Appeal UB, AM (reporting and keeper of the minutes), and HC

REPORTER

HM

PARTIES

Claimant

The Kingdom of Spain

Counsel: Advokat Pontus Ewerlöf and advokat Martin Rifall
Hannes Snellman Advokatbyrå AB
P.O. Box 7801
103 96 Stockholm

Respondent

Novenergia II - Energy & Environment (SCA), SICAR, B 124550

Counsel: Advokat Fredrik Andersson, advokat Jakob Ragnwaldh and advokat Robin Rylander
Mannheimer Swartling Advokatbyrå AB
P.O. Box 1711
111 87 Stockholm

Other

The European Commission

MATTER

Challenge to and invalidity of arbitral award; now the matter of application for a preliminary ruling from the European Court of Justice

After the Kingdom of Spain had requested that the Court of Appeal shall request a preliminary ruling from the European Court of Justice concerning certain matters, the Court of Appeal rejected the request in a decision of 25 April 2019, referencing that at present there was no need to request such preliminary ruling.

The Kingdom of Spain has yet again requested that the Court of Appeal shall request a preliminary ruling and has, in addition to the issues previously detailed, proposed a number of additional matters to submit to the European Court of Justice.

Novenergia II – Energy & Environment (SCA), SICAR (Novenergia) has objected to the request.

In a notification received by the Court of Appeal on 11 March 2020, the European Commission has notified the court of its intention – based on Article 29.2 of the Council Regulation 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty of the Functioning of the European Union – to submit a written submission to the court at its own initiative. The Commission has further requested the court's permission to present oral arguments at forthcoming oral hearings in the present proceeding.

The Commission has requested that the court shall determine a deadline prior to which the Commission shall submit the submission.

The Kingdom of Spain has welcomed a written submission and declared that it has no objections to the Commission's request to present oral arguments at a forthcoming main hearing.

Novenergia has objected to the Commission's request and argued that there is no legal basis for such a written submission nor for the presenting of oral arguments under reference to, amongst other things, that no issue concerns the application of rules on state aid.

Following a presentation, the Court of Appeal makes the following

DECISION (to be given on 27 May 2020)

1. The Court of Appeal rejects the motion that a request for a preliminary ruling shall made to the European Court of Justice.
2. The European Commission shall be allowed to submit a written submission by 1 August 2020.

Grounds for the decision

What has so far been presented in the action at issue does not justify a request for a preliminary ruling from the European Court of Justice.

The Commission's right to submit written submissions is directly stipulated in Article 29.2 of the Council Regulation laying down detailed rules for the application of Article 108 of the Treaty of the Functioning of the European Union, and does not require any form of permission to be granted by the court.

As concerns the Commission's request to be allowed to present oral arguments at forthcoming hearings, the Court of Appeal notes that such a request is most closely related to testimony by expert witnesses (cf. Government Bill 2003/04:80 p. 60 f.). In such circumstances, oral arguments can only be made at a main hearing. The Court of Appeal has yet to decide whether a main hearing will be held in the present case, and so the Court of Appeal intends to decide on the Commission's request to be allowed to present oral arguments after the Court of Appeal has decided on the forthcoming procedural management of the present case.

This decision may not be appealed separately.

AM

Minutes shown/