



SVEA COURT OF  
APPEAL  
Department 02  
Section 020104

**PROTOCOL**  
2020-05-19  
Report in Stockholm

Case exhibit 151  
Case No. T 4658-18

### **THE COURT**

Judges of appeal Ulrika Beergrehn, Annika Malm (reporting judge and keeper of the minutes) and Hanna Carysdotter

### **REPORTER**

Reporter Helene Montan

### **PARTIES**

#### **Claimant**

The Kingdom of Spain

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

#### **Defendant**

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

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

#### **Other**

The European Commission

### **MATTER**

Challenge and invalidity of an arbitral award; now the issue of referral to the CJEU for a preliminary ruling etc.

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Subsequent to the Kingdom of Spain's request that the Court of Appeal shall refer questions to the CJEU for a preliminary ruling regarding certain questions, the Court of Appeal rejected the request in a decision on 25 April 2019 since it at the time it was not motivated to obtain such preliminary ruling.

Dok.Id 1600709

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SVEA COURT OF APPEAL  
Department 02

**PROTOCOL**

The Kingdom of Spain has again requested that the Court of Appeal shall request a preliminary ruling and has, in addition to the questions already detailed, suggested several additional questions to be referred to the CJEU.

Novenergia II - Energy & Environment (SCA), SICAR (Novenergia) has contested this request.

In a submission received by the Court of Appeal on 11 March 2020, the European Commission has informed the Court of its intention to – with the support of article 29.2 in the Council Regulation 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union – to submit a written statement to the Court on its own initiative. The Commission has also requested the Court of Appeal’s permission to give an oral statement at upcoming oral proceedings in the case.

The Commission has requested that the Court of Appeal shall issue a deadline to submit the written statement.

The Kingdom of Spain has welcomed a written statement and raises no objection to the Commission’s request to give an oral statement at an upcoming main hearing.

Novenergia has opposed the Commission’s request and argued that there is no legal basis for either a written or an oral statement with reference to, inter alia, that there is no question concerning the application of State aid rules.

Subsequent to reporting the issue the Court of Appeal makes the following

**DECISION** (to be rendered on 2020-05-27)

1. The Court of Appeal rejects the request to obtain a preliminary ruling from the CJEU.

2. The European Commission is provided opportunity to submit a written statement on 1 August 2020 at the latest.

*Reasons for the decision*

On the basis of what has been submitted in the case so far, it is currently not motivated to obtain a preliminary ruling from the CJEU.

The Commission's right to give a written statement in a national court derives directly from Article 29.2 in the Council Regulation 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union and does not require any permission from the court.

As regards the Commission's request to give an oral statement at upcoming proceedings, such a statement may closest be equated with an expert opinion (*Cf.* Government Bill 2003/04:80 p. 60 *et seq.*). Under such circumstances, an oral statement may only be considered at a main hearing. The Court of Appeal is yet to determine if a main hearing shall be held and therefore intends to consider the Commission's request to give oral statement after that the Court of Appeal has decided on the further steps in the proceedings.

The decision may not be appealed separately.

Annika Malm

Minutes presented/