

WIND AND EU LAW

The Good, the Bad and the Ugly

The Good : the application of general EU rules

The Bad : the promotion of Wind energy

The Ugly : the imposition on Wind energy

Windpark Groothusen v Commission

(T-109/94 & C-48/96 P)

- *Thermie programme* (REG 2008/90) on the promotion of energy technology in Europe over 17 fields including renewable energy
- 129 Mio EUR of funding to 137 projects from 700 proposals (including 11 wind energy projects from 52 proposals)
- *Windpark Groothusen* challenges the Commission's refusal of its project
- Union Courts successively confirm refusal as a matter of course

RENEWABLE ENERGY DIRECTIVES

(2001/77 (RED I), 2009/28 (RED II) and 2018/2001 (RED III))

- The original sin : a list of sources instead of a definition

'renewable energy sources' shall mean renewable non-fossil energy sources (wind, solar, geothermal, wave, tidal, hydropower, biomass, landfill gas, sewage treatment plant gas and biogases)

- Contradiction between the promotion of generation capacity in renewables and of the criteria of final consumption
- The progressive bending of energy policy : indicative targets, binding targets, quantitative objectives of renewables capacity
- Growing complexity : from 8 pages (2001) to over 150 pages (2023)
- Some flexibility remains for Member States not wanting Wind energy

The Commission approval of State aid measures

(a review without (many) reviewers)

- Purpose and uses of Commission prior-approval decisions
- The accommodation of financial support to Wind energy
- The limitation of procedural rules (complaints, interested party)
- The denaturation of procedural rules (covid, administrative practice)

CONTROL BY THE EU COURT OF JUSTICE

- The right to prohibit wind energy in Natura 2000 :
Azienda Agro-Zootecnica Francini Sarl (C-2/10)
- The requirements of appropriate and prior impact assessments :
D'Oultremont e.a. (C-290/15) and *Nevele* (C-24/19)
- The consequences of illegal State aid measures :
Vent de Colère! e.a. (C-262/12)
- The right of Member States to set rules on distance:
ECOWIND (C-727/17)

THE UGLY :

The fog of Union and national competences

- *Case study* : the non-regulation of acoustic emissions from wind turbines
- The technical difficulties in enunciating and applying rules
- The acknowledgment of the issue
- The willfull ignorance of the Noise Directive' success story

THE UGLY :

The fog of Union and national competences

- NECPs, the Green Deal, the European Climate Law, the Taxonomy
- The COVID effect : RRF/RRP, FIT for 55, Net Zero
- The acceleration of renewables (Regulation 2022/2577)

SILVER LININGS?

- The economic and environmental demise of the Wind energy sector (costs, defects, and impacts)
- The European Wind Power Action Plan of 24 October 2023 (*COM(2023) 669 final*)
- The beginning of a serious interest in the European Parliament
- The European Court of Auditors (SR 22/2023 and SR 26/2023)

CONCLUSIONS

- How far can the EU go?
- EU and National competences intertwined
- Wind energy will not contain itself – action is going to be needed
- Every action taken helps and most actions start as national actions
- Union law is a tool