JUDGMENT OF THE COURT (Grand Chamber)

1 July 2014 (*)

(Reference for a preliminary ruling — National support scheme providing for the award of tradable green certificates for installations producing electricity from renewable energy sources — Obligation for electricity suppliers and certain users to surrender annually to the competent authority a certain number of green certificates — Refusal to award green certificates for electricity production installations located outside the Member State in question — Directive 2009/28/EC — Article 2, second paragraph, point (k), and Article 3(3) — Free movement of goods — Article 34 TFEU)

In Case C-573/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the förvaltningsrätten i Linköping (Sweden), made by decision of 4 December 2012, received at the Court on 6 December 2012, in the proceedings

**Ålands Vindkraft AB**

v

**Energimyndigheten,**

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, A. Tizzano, L. Bay Larsen, T. von Danwitz, M. Safjan and C.G. Fernlund, Presidents of Chambers, E. Levits, A. Ó Caoimh, A. Arabadjiev, C. Toader, D. Šváby, M. Berger, A. Prechal (Rapporteur) and E. Jarašiūnas, Judges,

Advocate General: Y. Bot,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 5 November 2013,

after considering the observations submitted on behalf of:

– Ålands Vindkraft AB, by F. Distefano, avvocatessa,

– the Energimyndigheten, by E. Brandsma and J. Johansson, acting as Agents, assisted by K. Forsbacka, advokat,

– the Swedish Government, by A. Falk, C. Meyer-Seitz, C. Stege, U. Persson and S. Johannesson, acting as Agents,

– the German Government, by T. Henze and K. Petersen, acting as Agents,

– the Netherlands Government, by M. de Ree and M. Bulterman, acting as Agents,

– the Norwegian Government, by M. Emberland and B. Gabrielsen, acting as Agents,

– the European Commission, by K. Herrmann and E. Kružíková, and by J. Enegren, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 28 January 2014,

gives the following

## Judgment

1 This request for a preliminary ruling concerns the interpretation of point (k) of the second paragraph of Article 2 and Article 3(3) of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ 2009 L 140, p. 16), and of Article 34 TFEU.

2 The request has been made in proceedings between Ålands Vindkraft AB and the Energimyndigheten (Swedish Energy Agency) concerning the Energimyndigheten's refusal to authorise, for the purposes of the award of electricity certificates, a wind farm in Finland operated by Ålands Vindkraft.

### Legal context

*EU law*

3 Directive 2009/28 entered into force on 25 June 2009 and required transposition into national law by 5 December 2010. With effect from 1 January 2012, Directive 2009/28 repealed Directive 2001/77/EC of the European Parliament and of the Council of 27 September 2001 on the promotion of electricity produced from renewable energy sources in the internal electricity market (OJ 2001 L 283, p. 33).

4 Recitals 1, 15, 25, 52 and 56 in the preamble to Directive 2009/28 state:

'(1) The control of European energy consumption and the increased use of energy from renewable sources, together with energy savings and increased energy efficiency, constitute important parts of the package of measures needed to reduce greenhouse gas emissions and comply with the Kyoto Protocol to the United Nations Framework Convention on Climate Change, and with further Community and international greenhouse gas emission reduction commitments beyond 2012. Those factors also have an important part to play in promoting the security of energy supply, promoting technological development and innovation and providing opportunities for employment and regional development, especially in rural and isolated areas.

...

(15) The starting point, the renewable energy potential and the energy mix of each Member State vary. It is therefore necessary to translate the Community 20% target into individual targets for each Member State, with due regard to a fair and adequate allocation taking account of Member States' different starting points and potentials, including the existing level of energy from renewable sources and the energy mix. It is appropriate to do this by sharing the required total increase in the use of energy from renewable sources between Member States on the basis of an equal increase in each Member State's share weighted by their [gross domestic product (GDP)], modulated to reflect their starting points, and by accounting in terms of gross final consumption of energy, with account being taken of Member States' past efforts with regard to the use of energy from renewable sources.

...

(25) Member States have different renewable energy potentials and operate different schemes of support for energy from renewable sources at the national level. The majority of Member States apply support schemes that grant benefits solely to energy from renewable sources that is produced

on their territory. For the proper functioning of national support schemes it is vital that Member States can control the effect and costs of their national support schemes according to their different potentials. One important means to achieve the aim of this Directive is to guarantee the proper functioning of national support schemes, as under Directive [2001/77], in order to maintain investor confidence and allow Member States to design effective national measures for target compliance. This Directive aims at facilitating cross-border support of energy from renewable sources without affecting national support schemes. It introduces optional cooperation mechanisms between Member States which allow them to agree on the extent to which one Member State supports the energy production in another and on the extent to which the energy production from renewable sources should count towards the national overall target of one or the other. In order to ensure the effectiveness of both measures of target compliance, i.e. national support schemes and cooperation mechanisms, it is essential that Member States are able to determine if and to what extent their national support schemes apply to energy from renewable sources produced in other Member States and to agree on this by applying the cooperation mechanisms provided for in this Directive.

...

(52) Guarantees of origin issued for the purpose of this Directive have the sole function of proving to a final customer that a given share or quantity of energy was produced from renewable sources. A guarantee of origin can be transferred, independently of the energy to which it relates, from one holder to another. However, with a view to ensuring that a unit of electricity from renewable energy sources is disclosed to a customer only once, double counting and double disclosure of guarantees of origin should be avoided. Energy from renewable sources in relation to which the accompanying guarantee of origin has been sold separately by the producer should not be disclosed or sold to the final customer as energy from renewable sources. It is important to distinguish between green certificates used for support schemes and guarantees of origin.

...

(56) Guarantees of origin do not by themselves confer a right to benefit from national support schemes.'

5 Article 1 of Directive 2009/28, entitled 'Subject-matter and scope', states:

'This Directive establishes a common framework for the promotion of energy from renewable sources. It sets mandatory national targets for the overall share of energy from renewable sources in gross final consumption of energy ... It lays down rules relating to statistical transfers between Member States, joint projects between Member States and with third countries, guarantees of origin, administrative procedures, information and training, and access to the electricity grid for energy from renewable sources. ...'

6 Points (j), (k) and (l) of the second paragraph of Article 2 of Directive 2009/28 lay down the following definitions:

'…

(j) "guarantee of origin" means an electronic document which has the sole function of providing proof to a final customer that a given share or quantity of energy was produced from renewable sources as required by Article 3(6) of Directive 2003/54/EC [of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC (OJ 2003 L 176, p. 37)];

(k) "support scheme" means any instrument, scheme or mechanism applied by a Member State or a group of Member States, that promotes the use of energy from renewable sources by reducing the cost of that energy, increasing the price at which it can be sold, or increasing, by means of a renewable energy obligation or otherwise, the volume of such energy purchased. This includes, but

is not restricted to, investment aid, tax exemptions or reductions, tax refunds, renewable energy obligation support schemes including those using green certificates, and direct price support schemes including feed-in tariffs and premium payments;

(l) "renewable energy obligation" means a national support scheme requiring energy producers to include a given proportion of energy from renewable sources in their production, requiring energy suppliers to include a given proportion of energy from renewable sources in their supply, or requiring energy consumers to include a given proportion of energy from renewable sources in their consumption. This includes schemes under which such requirements may be fulfilled by using green certificates'.

7 Under Article 3(1), (2) and (3) of Directive 2009/28:

'1. Each Member State shall ensure that the share of energy from renewable sources, calculated in accordance with Articles 5 to 11, in gross final consumption of energy in 2020 is at least its national overall target for the share of energy from renewable sources in that year, as set out in the third column of the table in part A of Annex I. Such mandatory national overall targets are consistent with a target of at least a 20% share of energy from renewable sources in the Community's gross final consumption of energy in 2020. ...

2. Member States shall introduce measures effectively designed to ensure that the share of energy from renewable sources equals or exceeds that shown in the indicative trajectory set out in part B of Annex I.

3. In order to reach the targets set in paragraphs 1 and 2 of this Article Member States may, inter alia, apply the following measures:

(a) support schemes;

(b) measures of cooperation between different Member States and with third countries for achieving their national overall targets in accordance with Articles 5 to 11.

Without prejudice to Articles [107 TFEU] and [108 TFEU], Member States shall have the right to decide, in accordance with Articles 5 to 11 of this Directive, to which extent they support energy from renewable sources which is produced in a different Member State.'

8 Under Article 5(1) and (3) of Directive 2009/28:

'1. The gross final consumption of energy from renewable sources in each Member State shall be calculated as the sum of:

(a) gross final consumption of electricity from renewable energy sources;

...

3. For the purposes of paragraph 1(a), gross final consumption of electricity from renewable energy sources shall be calculated as the quantity of electricity produced in a Member State from renewable energy sources, ...'

9 Paragraph 1 of Article 11 of Directive 2009/28, which is entitled 'Joint support schemes', provides:

'Without prejudice to the obligations of Member States under Article 3, two or more Member States may decide, on a voluntary basis, to join or partly coordinate their national support schemes. In such cases, a certain amount of energy from renewable sources produced in the territory of one participating Member State may count towards the national overall target of another participating Member State if the Member States concerned:

(a) make a statistical transfer of specified amounts of energy from renewable sources from one Member State to another Member State in accordance with Article 6; or

(b) set up a distribution rule agreed by participating Member States that allocates amounts of energy from renewable sources between the participating Member States. Such a rule shall be notified to the Commission no later than three months after the end of the first year in which it takes effect.'

10 Article 15 of Directive 2009/28, which concerns guarantees of origin, provides inter alia:

'1. For the purposes of proving to final customers the share or quantity of energy from renewable sources in an energy supplier's energy mix in accordance with Article 3(6) of Directive [2003/54], Member States shall ensure that the origin of electricity produced from renewable energy sources can be guaranteed as such within the meaning of this Directive, in accordance with objective, transparent and non-discriminatory criteria.

2. ...

The guarantee of origin shall have no function in terms of a Member State's compliance with Article 3. Transfers of guarantees of origin, separately or together with the physical transfer of energy, shall have no effect on the decision of Member States to use statistical transfers, joint projects or joint support schemes for target compliance or on the calculation of the gross final consumption of energy from renewable sources in accordance with Article 5.

...

9. Member States shall recognise guarantees of origin issued by other Member States in accordance with this Directive exclusively as proof of the elements referred to in paragraph 1 and paragraph 6(a) to (f). ...

...'

*Swedish law*

11 The electricity certificate scheme was established by Law (2003:113) on electricity certificates (lagen (2003:113) om elcertifikat) ('the Law of 2003'). It is a support scheme for the production of electricity from renewable energy sources ('green electricity'). That law was replaced, with effect from 1 January 2012, by Law (2011:1200) on electricity certificates (lagen (2011:1200) om elcertifikat) ('the Law of 2011'), which was intended, inter alia, to ensure the transposition of Directive 2009/28 into Swedish law.

12 Pursuant to the Law of 2011, approved producers are awarded an electricity certificate for each megawatt-hour (MWh) of green electricity produced. The förvaltningsrätten i Linköping (Administrative Court, Linköping; or 'the referring court') states that, although there is no express mention of any such restriction in the wording of the Law of 2011, it is apparent from the preparatory work for that law and for the Law of 2003 that approval for the award of such certificates is reserved to green electricity production installations located in Sweden. The approval of installations located outside Sweden is, by contrast, impossible.

13 Although it is not compulsory under the Law of 2011 to buy a corresponding volume of electricity when purchasing electricity certificates, the possibility of making such package purchases is not precluded.

14 The electricity certificates are tradable on an open competitive market where price is determined by the interplay of supply and demand.

15 The demand for electricity certificates stems from the fact that electricity suppliers and certain users are under an obligation to hold, and to surrender to the State on 1 April of each year, a certain number (quota)

of certificates corresponding to a proportion of the total quantity of electricity supplied or consumed during the preceding year.

16 In Chapter 4 of the Law of 2011, Paragraph 1 provides:

‘The following shall be subject to the quota obligation:

(1) electricity suppliers;

(2) electricity users who use electricity that they have themselves produced where the volume used is greater than 60 MWh per reference year in an installation whose capacity is greater than 50 [kilowatts (kW)];

(3) electricity users to the extent that they have imported or purchased electricity from the Nordic electricity exchange; and

(4) electro-intensive companies which have been registered.’

17 The electricity certificates quota — which is determined according to the objective pursued by the Kingdom of Sweden in terms of the production of green electricity — varies according to the periods concerned. For the period from 2010 to 2012, the quota was set at 0.179.

18 The purchase price for electricity certificates is passed on by the supplier to the consumer.

19 It also emerges from the observations made by the parties to the main proceedings and reproduced in the order for reference that, where they are unable to surrender the requisite number of electricity certificates by the due date, the electricity suppliers and users concerned are required to pay a sum of money. In its written observations submitted to the Court, the Swedish Government also referred to the obligation to pay such a fee, which it referred to as ‘specific’ (‘the specific fee’).

20 It is common ground, moreover, that, in the absence of an international agreement concluded pursuant to Article 11 of Directive 2009/28, the quota obligation can be fulfilled only by means of electricity certificates awarded under the Law of 2011.

21 In Chapter 1 of the Law of 2011, Paragraph 5 provides in that regard:

‘Electricity certificates which have been awarded for the production of renewable electricity in another State may be used to fulfil a quota obligation under the present Law, provided that the Swedish electricity certificate scheme has been coordinated with the electricity certificate scheme of that other State by an international agreement.’

22 On 29 June 2011, the Kingdom of Sweden concluded such an agreement with the Kingdom of Norway. No such agreement exists, however, between the Kingdom of Sweden and the Republic of Finland.

**The dispute in the main proceedings and the questions referred for a preliminary ruling**

23 On 30 November 2009, Ålands Vindkraft sought approval from the competent Swedish authority for the Oskar wind farm — located in the Åland archipelago in Finland — with a view to being awarded electricity certificates.

24 That application was refused by the Energimyndigheten, by decision of 9 June 2010, on the grounds that only green electricity production installations located in Sweden may be approved for the award of electricity certificates.

25 Ålands Vindkraft brought an action before the förvaltningsrätten i Linköping for annulment of that decision and approval of its application. In particular, it alleges infringement of Article 34 TFEU, arguing in that regard that, as a result of the electricity certificates quota, set for the period under consideration at 0.179, the effect of the electricity certificate scheme is that approximately 18% of the Swedish electricity consumption market is reserved to green electricity producers located in Sweden, to the detriment of electricity imports from other Member States. According to Ålands Vindkraft, a barrier to trade of that nature cannot be justified by considerations relating to protection of the environment, given, in particular, that the consumption of green electricity in Sweden would be promoted just as effectively through the award of electricity certificates for green electricity consumed in Sweden but produced in other Member States.

26 The förvaltningsrätten i Linköping notes at the outset that, although the decision was adopted pursuant to the Law of 2003, the dispute before it must, under Swedish law, be settled in accordance with the law applicable at the time of the court's assessment of that decision, that is to say, in the circumstances, in accordance with the Law of 2011. In any case, that law made only very slight changes to the rules applicable to the points at issue in the main proceedings.

27 The referring court considers it important, first, to determine whether the electricity certificate scheme at issue indeed constitutes a support scheme covered by point (k) of the second paragraph of Article 2 of Directive 2009/28 and by Article 3(3) thereof, given, in particular, that the scheme promotes the production of green electricity while those provisions refer, on the other hand, to the use or the consumption of green electricity. If the scheme does indeed constitute such a support scheme, it will be necessary to determine whether that scheme is authorised by Directive 2009/28, notwithstanding the fact that the directive excludes from its scope installations that produce green electricity in other Member States.

28 Next, the referring court notes that the scheme at issue enables Swedish producers of green electricity to obtain a direct economic advantage over producers in other Member States. Moreover, even though the Law of 2011 does not formally link sale of the electricity certificates to sale of the electricity, it is indirectly capable of promoting trade in electricity from Sweden in that suppliers may have an additional incentive to acquire electricity from Swedish producers because the latter are also able to provide them with the certificates that those suppliers need in order to fulfil their quota obligation.

29 According to the referring court, on the assumption that that legislation constitutes a measure having equivalent effect to a quantitative restriction on imports for the purposes of Article 34 TFEU, it is accordingly appropriate to consider whether that measure may, in the circumstances, be justified by overriding reasons relating to the protection of the environment.

30 In that context, the förvaltningsrätten i Linköping is uncertain, in particular, as to the possible relevance of *PreussenElektra* (C-379/98, EU:C:2001:160), given that, unlike the German support scheme at issue in the case which gave rise to that judgment, the Swedish electricity certificates scheme does not formally require electricity suppliers to purchase electricity from Swedish producers, and that, since the delivery of the judgment in *PreussenElektra*, EU law has evolved in various ways, notably as a result of the adoption of Directives 2001/77 and 2009/28.

31 Lastly, the referring court wonders whether, particularly in the light of the principle of legal certainty, the exclusion of green electricity produced outside Sweden from the scope of the support scheme at issue in the main proceedings should have been expressly provided for in the Law of 2011.

32 In those circumstances, the förvaltningsrätten i Linköping decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. The Swedish electricity certificate scheme is a national support scheme which requires electricity suppliers and certain electricity users of that Member State to purchase electricity certificates

corresponding, respectively, to a share of their supplies or use, without there being a specific requirement also to purchase electricity from the same source. The electricity certificates are awarded by the Kingdom of Sweden and are proof that a certain volume of electricity has been produced from renewable energy sources. The producers of [green] electricity receive, through the sale of those certificates, income additional to that derived from the sale of electricity. Are point (k) [of the second paragraph] of Article 2 of [Directive 2009/28] and Article 3(3) [thereof] to be interpreted as permitting a Member State to implement a national support scheme, such as that described above, from which only producers established in the territory of that State may benefit, the result of which is that those producers have an economic advantage over producers who are not eligible for electricity certificates?

2. In the light of Article 34 TFEU, can a system such as that described in Question 1 be regarded as constituting a quantitative restriction on imports or a measure having equivalent effect?

3. If the answer to Question 2 is affirmative, can such a scheme be regarded as compatible with Article 34 TFEU in the light of its objective of promoting the production of [green] electricity?

4. Does the fact that there is no express provision in national law requiring the support scheme to be confined to national producers have any bearing on the answers to the above questions?'

**Procedure before the Court**

33 By documents lodged at the Court Registry on 5 and 6 February 2014 and on 14 March 2014, respectively, the European Parliament, the Council of the European Union and the Kingdom of Sweden requested that the oral part of the procedure be reopened.

34 In support of those requests, they argue in essence that, following the delivery of the Advocate General's Opinion proposing that the Court should rule that Article 3(3) of Directive 2009/28 is invalid, and to the extent that the Court might accordingly be moved to give a ruling on the basis of reasoning relating to the invalidity of that provision rather than to its interpretation, a point that the interested persons have been unable to debate, it is appropriate to allow them to make submissions in that regard.

35 Under Article 83 of its Rules of Procedure, the Court may, after hearing the Advocate General, order the reopening of the oral part of the procedure, in particular if it considers that it lacks sufficient information or where a party has, after the close of that part of the procedure, submitted a new fact which is of such a nature as to be a decisive factor for the decision of the Court, or where the case must be decided on the basis of an argument which has not been debated by the parties or the interested persons referred to in Article 23 of the Statute of the Court of Justice of the European Union.

36 In the present case, the Court considers, after hearing the Advocate General, that it has all the information necessary to give a ruling. The Court further notes that the content of the ruling does not fall to be decided on the basis of reasoning, relating to the validity of Directive 2009/28, that the interested parties referred to in Article 23 of the Statute of the Court have been unable to debate.

37 In those circumstances, there is no need to reopen the oral phase of the proceedings.

**The questions referred for a preliminary ruling**

*Question 1*

38 By its first question, the referring court asks in essence whether point (k) of the second paragraph of Article 2 and Article 3(3) of Directive 2009/28 must be interpreted as allowing a Member State to establish a support scheme such as that at issue in the main proceedings, which provides for the award of

tradable certificates to producers of green electricity solely in respect of green electricity produced in the territory of that State and which places suppliers and certain electricity users under an obligation to deliver annually to the competent authority a certain number of those certificates, corresponding to a proportion of the total volume of electricity that they have supplied or consumed.

39 It is appropriate, in the first place, to consider whether a green electricity support system such as that at issue in the main proceedings constitutes a ‘support scheme’ within the meaning of point (k) of the second paragraph of Article 2 and Article 3(3) of Directive 2009/28.

40 In that regard, it should be observed at the outset that recital 25 to Directive 2009/28 shows that the EU legislature believed that one important means of achieving the aim of the directive was to ensure that the national support schemes provided for under Directive 2001/77 functioned properly.

41 Express reference is made in recital 14 to Directive 2001/77 to the fact that the various types of national support mechanism provided for under that directive include those which, in common with the support scheme at issue in the main proceedings, use ‘green certificates’.

42 Furthermore, points (k) and (l) of the second paragraph of Article 2 of Directive 2009/28 also refer specifically to national support schemes which use ‘green certificates’.

43 As regards the fact that the scheme at issue supports the ‘production’ of green electricity rather than its ‘use’ or ‘consumption’ for the purposes of point (k) of the second paragraph of Article 2 and Article 3(1) of Directive 2009/28, the following observations should be made.

44 As regards the fact that the definition of ‘support scheme’ laid down in point (k) of the second paragraph of Article 2 of Directive 2009/28 relates — as was noted by the referring court — to instruments, schemes or mechanisms designed to promote the ‘use’ of green energy, sometimes by means of an obligation to ‘use’ it, it should be noted first that Article 1 of Directive 2009/28, which concerns its subject-matter and scope, states that the directive establishes a common framework for the promotion of energy from renewable sources.

45 Secondly, it should be noted that point (l) of the second paragraph of Article 2 of Directive 2009/28 gives the meaning to be attributed to the words ‘renewable energy obligation’, as used in point (k) of that paragraph. In that connection, point (l) refers to national support schemes requiring producers to ‘include’ a given proportion of green energy ‘in their production’ or ‘requiring energy suppliers to include a given proportion of energy from renewable sources in their supply, or requiring energy consumers to include a given proportion of energy from renewable sources in their consumption’, while stating expressly that that category includes schemes under which such requirements may be fulfilled through the use of green certificates.

46 And, indeed, the support scheme at issue in the main proceedings displays just such characteristics, since it imposes upon electricity suppliers and certain consumers an obligation to use green certificates for the purposes of meeting their respective obligations to include a given proportion of green electricity in their supply or to include a given proportion of green electricity in their consumption.

47 On the other hand, as regards the fact that the mandatory national targets, to which the support schemes referred to in Article 3(3) of Directive 2009/28 are to contribute, are identified in Article 3(1) of the directive in terms of the proportion of green energy in the ‘final consumption’ of energy, it should be noted that, under Article 5(1) and (3) of the directive, that consumption is in reality calculated by reference to the volume of green electricity ‘produced’ in a Member State.

48 It thus follows from the considerations set out in paragraphs 40 to 47 above that a support scheme for green electricity production using green certificates, such as that at issue in the main proceedings, has the necessary characteristics to be categorised as a ‘support scheme’ within the meaning of point (k) of the second paragraph of Article 2 and Article 3(3) of Directive 2009/28.

49 With regard, in the second place, to the referring court's doubts concerning the fact that the support scheme at issue in the main proceedings provides for the award of electricity certificates solely in respect of green electricity produced in the national territory, it is clear that, in adopting Directive 2009/28, the EU legislature left open the possibility of such a territorial limitation.

50 In that regard, first of all, it can be seen from recital 25 to Directive 2009/28 that, having found that most Member States apply support schemes that promote only green energy produced in their territory, the EU legislature indicated that, in order to ensure the effectiveness of those schemes as measures intended to help meet the respective national overall targets, it is essential that Member States be able to determine whether and, if so, to what extent their national support schemes are to apply to green energy produced in other Member States and to agree on this by applying the cooperation mechanisms provided for under the directive.

51 Next, Article 3(3) of Directive 2009/28 expressly provides that, without prejudice to Articles 107 TFEU and 108 TFEU, Member States have the right to decide, in accordance with Articles 5 to 11 of the directive, to what extent they will support energy from renewable sources that is produced in another Member State.

52 Lastly, with regard more specifically to national schemes using green certificates, it should be noted that the EU legislature expressly took care to specify, in recitals 52 and 56 to Directive 2009/28, that the guarantees of origin issued in the various Member States in accordance with the directive must be distinguished from green certificates used in the context of national support schemes and that they do not, of themselves, confer the right to participate in such schemes. As can be seen, moreover, from point (j) of the second paragraph of Article 2 and from Article 15(1) and (9) of Directive 2009/28, mutual recognition between Member States of guarantees of origin whose sole purpose is to reveal to final customers the proportion of energy from renewable sources in an energy supplier's energy mix must be confined within those terms.

53 Those specifications in turn confirm that the EU legislature did not intend to require Member States who opted for a support scheme using green certificates to extend that scheme to cover green electricity produced on the territory of another Member State.

54 In the light of all the foregoing considerations, the answer to Question 1 is that point (k) of the second paragraph of Article 2 and Article 3(3) of Directive 2009/28 must be interpreted as allowing a Member State to establish a support scheme, such as that at issue in the main proceedings, which provides for the award of tradable certificates to producers of green electricity solely in respect of green electricity produced in the territory of that State and which places suppliers and certain electricity users under an obligation to deliver annually to the competent authority a certain number of those certificates, corresponding to a proportion of the total volume of electricity that they have supplied or consumed.

*Questions 2 and 3*

55 By its second and third questions, which it is appropriate to examine together, the referring court asks in essence whether Article 34 TFEU must be interpreted as meaning that national legislation such as that at issue in the main proceedings — which provides for the award of tradable certificates to producers of green electricity solely in respect of green electricity produced in the territory of the Member State concerned and which places suppliers and certain electricity users under an obligation to surrender annually to the competent authority a certain number of those certificates, corresponding to a proportion of the total volume of electricity that they have supplied or used, failing which they must pay a specific fee — constitutes a measure having equivalent effect to a quantitative restriction on imports for the purposes of that provision. If so, the referring court asks whether such legislation may nevertheless be justified in the light of its objective of promoting the production of green electricity.

The applicability of Article 34 TFEU

56 According to the Energimyndigheten and the Swedish and German Governments, there is no need to examine, in the light of Article 34 TFEU, the restriction curtailing the territorial scope of the legislation at issue in the main proceedings, inasmuch as Directive 2009/28 is a harmonisation measure which expressly provides that Member States are under no obligation to open up their support schemes to green electricity produced in other Member States and that such a course of action is merely an option for those States, which, if taken up, must be exercised strictly in the manner prescribed by the directive.

57 In that regard, it should be noted that the Court has consistently held that, where a matter has been the subject of exhaustive harmonisation at EU level, any national measure relating thereto must be assessed in the light of the provisions of that harmonising measure and not in the light of primary law (see, inter alia, *Radlberger Getränkegesellschaft and S. Spitz*, C-309/02, EU:C:2004:799, paragraph 53 and the case-law cited).

58 In the circumstances of the present case, it is therefore necessary to determine whether the harmonisation brought about by Directive 2009/28 ought to be regarded as being of such a kind as to preclude an examination of whether legislation such as that at issue is compatible with Article 34 TFEU.

59 In that regard, it should be noted at the outset that, far from seeking to bring about exhaustive harmonisation of national support schemes for green energy production, the EU legislature — as is apparent, inter alia, from recital 25 to Directive 2009/28 — based its approach on the finding that Member States apply different support schemes and on the principle that it is important to ensure the proper functioning of those schemes in order to maintain investor confidence and to enable those States to define effective national measures in order to achieve their mandatory national overall targets under the directive.

60 The definition of ‘support scheme’, for the purposes of Directive 2009/28, as laid down in point (k) of the second paragraph of Article 2 thereof, also highlights the fact that the instruments, schemes or support mechanisms are essentially measures adopted by the State, while confining itself to referring, in quite broad terms, to the existing types of national incentive designed to promote the use of energy from renewable sources.

61 In Article 1 of Directive 2009/28, which describes the subject-matter of that directive, there is nothing else to suggest that the directive is intended to bring about harmonisation of characteristics specific to the various national support schemes.

62 Nor does Article 3(3) of Directive 2009/28, which in substance simply authorises and encourages national support schemes for green energy production, contain any guidance on such characteristics, apart from the clarification that Member States have the right to decide, in accordance with Articles 5 to 11 of that directive, to what extent they support green energy produced in another Member State.

63 Against that background, it cannot be considered that, in covering that aspect of the territorial scope of national support schemes, the harmonisation brought about by Directive 2009/28 in the field of support schemes was of such a kind as to preclude an examination of their compatibility with Article 34 TFEU (see, by analogy, *Radlberger Getränkegesellschaft and S. Spitz*, EU:C:2004:799, paragraphs 54 to 57).

64 In the light of the foregoing considerations, it is appropriate to proceed with the interpretation of the Treaty provisions relating to the free movement of goods from the perspective contemplated in Questions 2 and 3.

The existence of a barrier to trade

65 The free movement of goods between Member States is a fundamental principle of the Treaty which finds its expression in the prohibition set out in Article 34 TFEU (see, inter alia, *Commission* v *Denmark*, C-192/01, EU:C:2003:492, paragraph 38).

66 It is settled case-law that, in prohibiting between Member States measures having equivalent effect to quantitative restrictions on imports, Article 34 covers any national measure capable of hindering, directly or indirectly, actually or potentially, intra-Community trade (see, inter alia, *Dassonville*, 8/74, EU:C:1974:82, paragraph 5, and *PreussenElektra*, EU:C:2001:160, paragraph 69).

67 As it is, it must be noted in that regard that the legislation at issue is capable, in various ways, of hindering — at least indirectly and potentially — imports of electricity, especially green electricity, from other Member States.

68 In the first place, it follows from that legislation that suppliers and certain consumers are required to hold on the annual due date a certain number of electricity certificates for the purposes of meeting their quota obligation, which depends on the total volume of electricity that they supply or consume.

69 However, in the absence, inter alia, of an international agreement to that effect, only certificates awarded under the national scheme can be used to meet that obligation. Accordingly, those suppliers and consumers are as a rule required, on the basis of the electricity that they import, to purchase such certificates, failing which they have to pay a specific fee.

70 Such measures are thus capable of impeding electricity imports from other Member States (see, inter alia, by analogy, *Ligur Carni and Others*, C-277/91, C-318/91 and C-319/91, EU:C:1993:927, paragraph 36).

71 In the second place, the referring court notes both in its order and in its questions that, although green electricity producers may, in the context of the support scheme established by the legislation at issue in the main proceedings, trade their electricity certificates on an open, competitive market that is dedicated to that trade, there is nothing in that legislation to stop the producers from selling those certificates together with the electricity that they produce, as a package.

72 The existence of such a possibility seems capable in practice of facilitating the opening of negotiations and the establishment of contractual relationships — in some cases, on a long-term basis — concerning the supply of national electricity by those producers to suppliers or electricity users, the latter being able to obtain, in that way, both the electricity and the green certificates that they need in order to meet their quota obligation.

73 It follows that, to that extent also, the effect of the support scheme at issue in the main proceedings is, at least potentially, to curb electricity imports from other Member States (see, to that effect, *Commission* v *Ireland*, 249/81, EU:C:1982:402, paragraphs 27 to 29).

74 In that context, it should in particular be noted that failure by a Member State to adopt adequate measures to prevent barriers to the free movement of goods that have been created, in particular, through the actions of traders but made possible by specific legislation that that State has introduced, is just as likely to obstruct intra-Community trade as is a positive act (see, to that effect, *Commission* v *France*, C-265/95, EU:C:1997:595, paragraph 31, and *Schmidberger*, C-112/00, EU:C:2003:333, paragraph 58).

75 In the light of all the foregoing, it must be held that legislation such as that at issue in the main proceedings is capable of impeding imports of electricity, especially green electricity, from other Member States and that, in consequence, it constitutes a measure having equivalent effect to quantitative restrictions on imports, in principle incompatible with the obligations under EU law resulting from Article 34 TFEU, unless that legislation can be objectively justified (see, to that effect, inter alia, *Commission* v *Austria*, C-320/03, EU:C:2005:684, paragraph 69).

The possible justification

76 The Court has consistently held that national legislation or a national practice that constitutes a measure having equivalent effect to quantitative restrictions may be justified on one of the public interest grounds

listed in Article 36 TFEU or by overriding requirements. In either case, the national provision must, in accordance with the principle of proportionality, be appropriate for ensuring attainment of the objective pursued and must not go beyond what is necessary in order to attain that objective (see, inter alia, *Commission* v *Austria*, C-524/07, EU:C:2008:717, paragraph 54 and the case-law cited).

– The objective of promoting the use of renewable energy sources

77 According to settled case-law, national measures that are capable of hindering intra-Community trade may inter alia be justified by overriding requirements relating to protection of the environment (see, to that effect, *Commission* v *Austria*, EU:C:2008:717, paragraph 57 and the case-law cited).

78 In that regard, it should be noted that the use of renewable energy sources for the production of electricity, which legislation such as that at issue in the main proceedings seeks to promote, is useful for the protection of the environment inasmuch as it contributes to the reduction in greenhouse gas emissions, which are amongst the main causes of climate change that the European Union and its Member States have pledged to combat (see, to that effect, *PreussenElektra*, EU:C:2001:160, paragraph 73).

79 That being so, the increase in the use of renewable energy sources constitutes — as is explained, in particular, in recital 1 to Directive 2009/28 — one of the important components of the package of measures needed to reduce greenhouse gas emissions and to comply with the Kyoto Protocol to the United Nations Framework Convention on Climate Change, and with other Community and international greenhouse gas emission reduction commitments beyond the year 2012.

80 As the Court has pointed out, such an increase is also designed to protect the health and life of humans, animals and plants, which are among the public interest grounds listed in Article 36 TFEU (see, to that effect, *PreussenElektra*, EU:C:2001:160, paragraph 75).

81 It is also clear from Article 194(1)(c) TFEU that the development of renewable energy is one of the objectives that must guide EU energy policy.

82 In the light of the foregoing considerations, it must be acknowledged that the objective of promoting the use of renewable energy sources for the production of electricity, such as the objective pursued by the legislation at issue in the main proceedings, is in principle capable of justifying barriers to the free movement of goods.

– Proportionality

83 As was noted in paragraph 76 above, in order for the national legislation to be capable of justification, it must nevertheless meet the requirements flowing from the principle of proportionality, that is to say, it must be appropriate for securing the attainment of the legitimate objective pursued and it must be necessary for those purposes.

84 It is appropriate, at the outset and in response to some questions raised in that regard by the referring court, to review, in the light of the developments undergone by the relevant EU legislation, certain features of the electricity market taken into consideration by the Court in the review of proportionality that it undertook in *PreussenElektra* (EU:C:2001:160).

85 In particular, as was pointed out by the Advocate General in points 83 to 86 of his Opinion, the finding made by the Court in paragraph 78 of the judgment in *PreussenElektra* — that Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity (OJ 1997 L 27, p. 20), then in force, merely marked a phase in the liberalisation of the electricity market and left in place some barriers to trade in electricity between Member States — no longer holds true.

86 It should be noted that the European Union subsequently adopted various legislative instruments whose purpose was gradually to dismantle those barriers so as to enable a fully operational internal market in electricity to be established, in which the cross-border trade in electricity within the European Union is intensified and all suppliers will be able to supply their goods and consumers will be free to choose their supplier. Particular examples of such instruments are: Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC (OJ 2003 L 176, p. 37) and its successor, Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54 (OJ 2009 L 211, p. 55); and Regulation (EC) No 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity (OJ 2003 L 176, p. 1) and its successor, Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation No 1228/2003 (OJ 2009 L 211, p. 15).

87 On the other hand, the finding made by the Court in paragraph 79 of the judgment in *PreussenElektra* (EU:C:2001:160) — to the effect that the nature of electricity is such that, once it has been allowed into the transmission or distribution system, it is difficult to determine its origin and in particular the source of energy from which it was produced — remains valid.

88 The fact that, under Directive 2001/77 and its successor, Directive 2009/28, the origin of green electricity may be attested by guarantees of origin is not capable of calling that finding into question.

89 In the first place, as was pointed out in paragraph 52 above, the sole purpose of those guarantees of origin is to indicate to final customers the proportion of energy from renewable sources in an electricity supplier's energy mix.

90 In the second place, it must be stated that, given the fungible nature of the electricity in the transmission and distribution systems, those guarantees cannot serve as confirmation that a certain volume of electricity supplied by those networks is precisely the electricity from renewable energy sources in respect of which those guarantees were given and, accordingly, the systematic identification of electricity as green electricity at the distribution and consumption stages remains difficult to put into practice.

91 In the light of those preliminary considerations, it is appropriate first to examine one of the aspects of the legislation at issue in the main proceedings, highlighted by the referring court in its questions and on the strength of which approval was refused to Ålands Vindkraft, namely, the fact that, under that legislation, electricity certificates are to be awarded solely in respect of green electricity produced in the national territory.

92 In that regard, it must be acknowledged that, as EU law currently stands, such a territorial limitation may in itself be regarded as necessary in order to attain the legitimate objective pursued in the circumstances, which is to promote increased use of renewable energy sources in the production of electricity.

93 It is admittedly true that, as Ålands Vindkraft, among others, has argued, it seems at first sight possible for the environmental protection objective underlying the increased production and consumption of green electricity — specifically, the objective of reducing greenhouse gas emissions — to be pursued within the European Union, together with the related objectives of protecting human, animal and plant life or health, regardless of whether that increase flows from installations located in the territory of a particular Member State.

94 However, since, in particular, EU law has not harmonised the national support schemes for green electricity, it is possible in principle for Member States to limit access to such schemes to green electricity production located in their territory.

95 First, the fact that a national support scheme is designed to favour directly the production of green electricity, rather than solely its consumption, can be explained, in particular, by the fact that the green nature of the electricity relates only to its method of production and that, accordingly, it is primarily at the production stage that the environmental objectives in terms of the reduction of greenhouse gases can actually be pursued.

96 By contrast, and as was pointed out in paragraphs 87 and 90 above, once the green electricity has been allowed into the transmission or distribution system, it is difficult to determine its specific origin and, accordingly, its systematic identification at the consumption stage as green electricity is difficult to put into practice.

97 It is also important to remember that, as is apparent from recitals 1 and 25 to Directive 2009/28 and Articles 3(1) and 5(1) and (3) thereof, and as was observed in relation to Question 1, in order to ensure the implementation of the international environmental commitments entered into by the European Union, the EU legislature has assigned the various Member States mandatory national targets formulated in terms of quotas for the production of green electricity.

98 Secondly, and in relation to the fact that the support scheme at issue in the main proceedings is designed to apply solely to green electricity production located in the national territory, it should be observed that, as was noted by the EU legislature in recital 15 to Directive 2009/28, the starting points, the renewable energy potential and the energy mix of each Member State vary, a fact which moved the EU legislature to consider it appropriate, taking into account those differences, to allocate among those States a fair and appropriate share of the effort required to satisfy the European Union's international commitments.

99 Furthermore, as was also noted by the EU legislature in recital 25 to Directive 2009/28, it is essential, in order to ensure the proper functioning of the national support schemes, that Member States be able to 'control the effect and costs of their national support schemes according to their different potentials', while maintaining investor confidence.

100 It should be noted, moreover, that while preserving the national and, in principle, territorial nature of the existing support schemes, the EU legislature has none the less also established various mechanisms to enable Member States to cooperate, in so far as is possible, in order to achieve their mandatory targets under Directive 2009/28. One of those mechanisms is the establishment, provided for under Article 11 of the directive, of joint support schemes.

101 As was pointed out in paragraph 22 above, that option was exercised by the Kingdom of Sweden and the Kingdom of Norway, which took steps to merge the green certificate support schemes that they had each set up.

102 As regards Ålands Vindkraft's contention that, according to certain indicators, the Kingdom of Sweden now has a green electricity production capacity enabling it to meet its mandatory national targets under Directive 2009/28, it must be held that, even supposing that to be the case, it cannot support the inference that the territorial limitation characterising the support scheme at issue in the main proceedings is no longer necessary.

103 In that regard, it need only be observed that a green energy support scheme, whose production costs seem — as the Swedish Government and the Commission, in particular, have maintained — to be still quite high as compared with the costs of electricity produced from non-renewable energy sources, is inherently designed to foster, from a long-term perspective, investment in new installations, by giving producers certain guarantees about the future marketing of their green electricity. Accordingly, the effectiveness of such a scheme requires by definition a measure of continuity sufficient, in particular, to ensure the fulfilment of the legitimate expectations of investors who have committed themselves to such projects, and the continued operation of those installations.

104 In the light of all the foregoing, it does not appear that, merely by reserving a support scheme using green certificates, such as that at issue in the main proceedings, exclusively to green electricity produced in the national territory, the Kingdom of Sweden has acted in breach of the principle of proportionality. As EU law currently stands, the Kingdom of Sweden was legitimately able to consider that such a territorial limitation does not go beyond what is necessary in order to attain the objective — pursued both by Directive 2009/28 and by the national scheme which falls within the scope of that directive — of increasing the production and, indirectly, the consumption of green electricity in the European Union.

105 Secondly, it is none the less important to examine whether, considered together with that territorial limitation, the other features of the legislation at issue in the main proceedings to which the referring court refers support the conclusion that, viewed as a whole, that legislation meets the requirements entailed by the principle of proportionality.

106 In that regard, it should be noted that, according to the order for reference, that legislation is characterised inter alia by an annual obligation for suppliers and certain users of electricity to hold and to surrender to the competent authority a certain number of electricity certificates, corresponding to a proportion of the total volume of electricity that they have supplied or consumed, failing which they must pay a specific fee.

107 It can also be seen from the order for reference that interested parties can obtain electricity certificates sold by producers on a specific market open to competition in which the price of the certificate is determined by the interplay of supply and demand, and that the legislation does not require, or prohibit, the purchase of both the electricity and the certificates from a single producer.

108 It therefore follows from the legislation at issue in the main proceedings that, in the case of imports to Sweden of green electricity produced by Ålands Vindkraft in Finland, the marketing or consumption of that electricity will require, in general, the suppliers or consumers concerned — including, as the case may be, Ålands Vindkraft in its capacity as a supplier — to purchase electricity certificates in proportion to the volume of electricity imported.

109 In those respects, it should be noted first that a national support scheme which, like the scheme at issue in the main proceedings, uses green certificates, is designed in particular to have the additional cost of producing green electricity borne directly by the market, that is to say, by the suppliers and users of electricity, who are required to meet the quota obligation, and, ultimately, by the consumers.

110 In choosing to do this, a Member State does not exceed the bounds of the discretion to which it remains entitled in the pursuit of the legitimate objective of increasing the production of green electricity.

111 Secondly, it must be noted that, unlike, for example, investment aid, the purpose of this type of scheme is to support the operation of installations producing green electricity once they become active. In that regard, the quota obligation is designed in particular to guarantee green electricity producers a demand for the certificates they have been awarded and in that way to facilitate the sale of the green energy that they produce at a price higher than the market price for conventional energy.

112 The effect of that scheme in terms of offering an incentive for electricity producers in general — including, in particular, for those who are both producers, on the one hand, and suppliers or consumers, on the other — to increase their production of green electricity does not appear to be open to doubt; nor, consequently, does it appear possible to call in question the ability of that scheme to attain the legitimate objective pursued in the circumstances of this case.

113 However, it should be noted, thirdly, that, by its very nature, such a scheme requires for its proper functioning market mechanisms that are capable of enabling traders — who are subject to the quota obligation and who do not yet possess the certificates required to discharge that obligation — to obtain certificates effectively and under fair terms.

114 It is therefore important that mechanisms be established which ensure the creation of a genuine market for certificates in which supply can match demand, reaching some kind of balance, so that it is actually possible for the relevant suppliers and users to obtain certificates under fair terms.

115 According to the findings of the referring court, the green certificates are actually sold, in the Member State concerned, on a market that is open to competition and, accordingly, the price of those certificates is determined by the interplay of supply and demand.

116 As regards the fact that, under the legislation at issue in the main proceedings, suppliers and users which do not meet their quota obligation must pay a specific fee, it is appropriate to state the following. While the imposition of such a fee may admittedly be considered necessary as an incentive, on the one hand, to producers to increase their production of green electricity, and on the other, to traders subject to a quota obligation to take steps to acquire the requisite certificates, it is none the less necessary that neither the method for determining that fee nor the amount of that fee go beyond what is necessary for the purposes of providing such an incentive; in particular, it is necessary in that connection that no excessive penalties be imposed on the traders concerned.

117 Fourthly, it should be noted that the referring court states that the legislation at issue in the main proceedings does not preclude suppliers and users under a quota obligation from obtaining both the electricity and the electricity certificates from domestic green electricity producers. Ålands Vindkraft submits that, as a result, domestic green electricity producers can, by coupling the sale of electricity and electricity certificates, promote the sale of the latter.

118 In that regard, it should be noted that, provided that there is a market for green certificates which meets the conditions set out in paragraphs 113 and 114 above and on which traders who have imported electricity from other Member States are genuinely able to obtain certificates under fair terms, the fact that the national legislation at issue in the main proceedings does not prohibit producers of green electricity from selling to traders under the quota obligation both the electricity and the certificates does not mean that the legislation goes beyond what is necessary to attain the objective of increasing the production of green electricity. The fact that such a possibility remains open appears to be an additional incentive for producers to increase their production of green electricity.

119 In the light of all the foregoing considerations, the answer to Questions 2 and 3 is that Article 34 TFEU must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which provides for the award of tradable certificates to green electricity producers solely in respect of green electricity produced in the territory of the Member State concerned and which places suppliers and certain electricity users under an obligation to surrender annually to the competent authority a certain number of those certificates, corresponding to a proportion of the total volume of electricity that they have supplied or used, failing which they must pay a specific fee.

*Question 4*

120 By its fourth question, read in the light of the grounds stated in the order for reference, the referring court asks, in essence, whether, on the assumption that Article 34 TFEU must be interpreted as not precluding legislation such as that at issue in the main proceedings, in so far as that legislation reserves the support measures introduced to green electricity production in the territory of the Member State concerned, EU law — including, in particular, the principle of legal certainty enshrined therein — does, on the other hand, preclude a situation in which the restriction of the territorial scope is not expressly laid down in that legislation.

121 In that regard, it should be noted that the referring court finds that, under the legislation at issue in the main proceedings, the electricity certificate scheme is not open to green electricity production installations located outside Sweden. The referring court states that, although that restriction is not expressly laid down in that legislation, the legislation must be construed to that effect, particularly in view of the related *travaux préparatoires*.

122 The Commission argues in that connection that the restriction is laid down expressly in Article 5 of Chapter 1 of the Law of 2011 and that, accordingly, there is no need for the Court to answer the question.

123 It should be noted, however, that the question whether — and, if so, to what extent — the restriction of the territorial scope of the legislation at issue in the main proceedings is apparent from the wording of that legislation pertains to the interpretation of that legislation and accordingly falls under the exclusive jurisdiction of the national courts (see, to that effect, inter alia, *ČEZ*, C-115/08, EU:C:2009:660, paragraph 57 and the case-law cited).

124 As regards the question raised by the referring court, it should be noted first of all that, in keeping with the answer given by the Court to Question 1, the support scheme at issue in the main proceedings constitutes a support scheme within the meaning of point (k) of the second paragraph of Article 2 and Article 3(3) of Directive 2009/28, the purpose of which — as is apparent from the latter provision — is accordingly to help the Kingdom of Sweden meet its mandatory targets under the directive in relation to the production of green electricity in its territory.

125 It is settled case-law that where Member States adopt, in that way, measures by which they implement EU law, they are required to respect the general principles of that law, which include the principle of legal certainty (see, to that effect, inter alia, *Plantanol*, C-201/08, EU:C:2009:539, paragraph 43 and the case-law cited, and *IBV & Cie*, C-195/12, EU:C:2013:598, paragraph 49).

126 It is for the referring court to determine whether national legislation such as that at issue in the main proceedings is consistent with that principle, as the Court, when giving a preliminary ruling under Article 267 TFEU, has jurisdiction only to provide the national court with all the criteria for the interpretation of EU law which may enable it to determine the issue of compatibility (see, to that effect, inter alia, *Plantanol*, EU:C:2009:539, paragraph 45 and the case-law cited).

127 In that regard, it should be noted that, according to the Court's established case-law, the principle of legal certainty requires, on the one hand, that rules of law be clear and precise and, on the other, that their application be foreseeable by those subject to them (see, inter alia, *Plantanol*, EU:C:2009:539, paragraph 46 and the case-law cited).

128 Specifically, in order to meet the requirements of that principle, legislation must enable those concerned to know precisely the extent of the obligations imposed on them, and those persons must be able to ascertain unequivocally their rights and obligations and take steps accordingly (see, inter alia, *ArcelorMittal Luxembourg* v *Commission* and *Commission* v *ArcelorMittal Luxembourg and Others*, C-201/09 P and C-216/09 P, EU:C:2011:190, paragraph 68 and the case-law cited).

129 As regards the territorial scope of the support scheme provided for under the national legislation at issue in the main proceedings, the referring court may, in order to determine whether the requirements of the principle of legal certainty are met, consider all relevant elements which emerge from the terms, objectives or general scheme of that legislation (see, by analogy, *Mitsui & Co. Deutschland*, C-256/07, EU:C:2009:167, paragraph 32).

130 That court may also take into account the fact that the context to which the national legislation belongs is the implementation of Directive 2009/28, to which the *travaux préparatoires* for the Law of 2011 expressly refer, to the extent that, in particular, as is apparent from the Court's examination of Question 1, that directive expressly permits the establishment by Member States of similar support schemes subject to a territorial limitation, for the purposes, inter alia, of enabling those States to meet their mandatory targets under the directive with regard to the production of green energy in their territory.

131 In view of the foregoing and subject to final assessments which fall within the exclusive jurisdiction of the national court, it does not appear that the legislation at issue in the main proceedings is in breach of the

principle of legal certainty.

132 In the light of all of the foregoing considerations, the answer to Question 4 is that it is for the national court to determine, taking into account all relevant factors — which may include the EU legislative context in which the legislation at issue in the main proceedings arises — whether, in terms of its territorial scope, that legislation meets the requirements of the principle of legal certainty.

## Costs

133 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. **Point (k) of the second paragraph of Article 2 and Article 3(3) of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC must be interpreted as allowing a Member State to establish a support scheme, such as that at issue in the main proceedings, which provides for the award of tradable certificates to producers of green electricity solely in respect of green electricity produced in the territory of that State and which places suppliers and certain electricity users under an obligation to deliver annually to the competent authority a certain number of those certificates, corresponding to a proportion of the total volume of electricity that they have supplied or consumed.**

2. **Article 34 TFEU must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which provides for the award of tradable certificates to green electricity producers solely in respect of green electricity produced in the territory of the Member State concerned and which places suppliers and certain electricity users under an obligation to surrender annually to the competent authority a certain number of those certificates, corresponding to a proportion of the total volume of electricity that they have supplied or used, failing which they must pay a specific fee.**

3. **It is for the national court to determine, taking into account all relevant factors — which may include the EU legislative context in which the legislation at issue in the main proceedings arises — whether, in terms of its territorial scope, that legislation meets the requirements of the principle of legal certainty.**

[Signatures]

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* Language of the case: Swedish.