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Judgment in Case E-2/25 *Sarpsborg Avfallsenergi AS and Others v Norwegian State*

INSTALLATION WHICH INCINERATES HAZARDOUS OR MUNICIPAL WASTE ARE EXEMPTED FROM THE EMISSIONS TRADING SCHEME

In a judgment delivered today, the Court answered a question referred to it by Borgarting Court of Appeal (*Borgarting lagmannsrett*) concerning the interpretation of the Emissions Trading System Directive¹ (“the ETS Directive”). Fredrikstad Vann Avløp og Renovasjonsforetak (“FREVAR”) and Saren Energy Sarpsborg AS (“SAREN”) each operates an incineration plant, respectively situated in Fredrikstad and Sarpsborg municipalities, Norway. The request was made in proceedings between FREVAR, SAREN and the Norwegian Government concerning the validity of two decisions by the Norwegian Environment Agency granting permits for emissions subject to an obligation to surrender allowances in accordance with the ETS Directive.

The referring court essentially sought guidance on whether the first activity in Annex I to the ETS Directive must be interpreted such that all installations for the incineration of hazardous or municipal waste are excluded from the scope of the directive, including those which do not have waste incineration as their sole purpose, provided that they are used for the incineration of other waste only marginally. Central to that question is whether the reasoning in the judgment of the European Court of Justice of 6 June 2024 in *Naturvårdsverket*, C-166/23, EU:C:2024:465, concerning the interpretation of point 5 of Annex I to the ETS Directive applies in a similar manner to the first activity listed.

The Court answered this question in the affirmative. The Court thus held that the first activity listed in Annex I to the ETS Directive must be interpreted as meaning that all installations which incinerate hazardous or municipal waste are excluded from the scope of that directive, including those which do not have the incineration of that waste as their sole purpose, provided that they are used for the incineration of other waste only marginally.

In its assessment, the Court emphasised that the first activity and point 5 of Annex I are worded similarly and that the exception responds to a secondary objective of that directive, namely, to promote waste incineration over landfill.

The advisory opinion is a step in the proceedings pending before the national court. Borgarting Court of Appeal will now resume its proceedings and decide the case pending before it in light of the Court’s interpretation of the Directive.

The full text of the judgment may be found on the Court’s website: eftacourt.int/cases/e-02-25/.

This press release is an unofficial document and is not binding upon the Court.

¹ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC.