



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-262/12
Vent de Colère and Others

According to Advocate General Jääskinen, the French system for financing the obligation to purchase the electricity generated by wind turbines falls within the concept of aid granted by the State or through State resources

The financial burden arising from the obligation to purchase the electricity generated by wind turbines at more than the market price applies to all electricity consumers in France

According to EU law, as interpreted by the Court of Justice, a measure will constitute 'State aid' if four cumulative conditions are met: there must be an intervention by the State or through State resources; the intervention must be liable to affect trade between Member States; it must confer an advantage on the recipient; and, lastly, it must distort or threaten to distort competition.

Regarding, in particular, the concept of an intervention by the State or through State resources, which is the only condition in respect of which the Conseil d'État (France) has requested interpretation in the present case, the case-law of the Court provides that, in order for advantages to be categorised as aid, they must, first, be granted directly or indirectly through State resources and, second, be imputable to the State. Moreover, in view of the limited scope of the question referred, the definitive categorisation of the measure as 'State aid' is a matter for the national court.

In the present case, French legislation provides that electricity producers generating electricity using wind turbines on the national territory have the benefit of an obligation to purchase the electricity generated in that way. The undertakings required to purchase that electricity are the distributors operating the network to which the installation is connected, namely Electricité de France ('EDF') and the non-nationalised distributors; they are obliged to purchase **that electricity at more than the market price**. Consequently, that financing method gives rise to additional costs for electricity distributors.

Previously, the additional costs arising from that purchase obligation were offset by a public service fund for the generation of electricity, which was managed by the Caisse des dépôts et des consignations ('CDC') and funded by charges payable by the producers, suppliers and distributors referred to in the relevant legislation. As the national legislation has been amended, it now provides that **the additional costs arising from that purchase obligation are to be offset in full by charges payable by the end consumers** of electricity in France.

Vent de Colère! – Fédération Nationale and 11 other applicants have brought an action before the Conseil d'État, considering that the financing mechanism put in place by the amended French legislation constitutes State aid within the meaning of EU law. They are therefore asking the national court to annul the ministerial order of 2008 laying down the conditions for the purchase of electricity generated by wind turbines.

In his opinion delivered today, **Advocate General Jääskinen proposes that the Court should find that the financing mechanism put in place by the amended French legislation falls within the concept of aid granted by the State or through State resources.**

When examining the condition relating to **the measure being imputable to the State**, the Advocate General is of the view that, as the charge levied on end consumers was instituted by

French law, the fixing of the contested charge must be considered to be the result of conduct imputable to the French State.

Next, **concerning the requirement for the resources to have a State origin**, the Advocate General makes reference to the fact that the concept of State aid includes all the financial resources which the State may use to support undertakings. The fact that those resources constantly remain under public control, and therefore available to the national authorities, is sufficient for them to be categorised as State resources.

Regarding the control exercised by the State, first, the Advocate General observes that public-law bodies have played a part in the mechanism put in place by the French legislation: the amount of the tax which every end consumer of electricity must pay in France is determined annually by a ministerial order. Moreover, even though in practice the legislation in question does not ensure exact equivalence between the additional costs borne by distributors and the charge used to reimburse those distributors, the law lays down the principle that the obligation to purchase electricity generated by wind turbines must be covered in full, which, according to the Advocate General, proves that the State is guaranteeing the mechanism as a whole. Furthermore, the law establishes administrative penalty mechanisms in the event of non-payment of the charge.

It is settled case-law that funds which are financed through compulsory contributions imposed by national legislation and managed and apportioned in accordance with the provisions of that legislation must be regarded as constituting State resources, even if they are administered by institutions distinct from the public authorities.

Second, the Advocate General points out that the resources obtained from the charges imposed on all consumers pass through a body established under public law and expressly authorised by the State, namely, the CDC.

Lastly, regarding the nature of the resources, the Advocate General observes that the financial burden arising from the obligation to purchase the electricity generated by wind turbines at more than the market price is borne by all consumers of electricity in France¹, irrespective of whether they purchase green energy or not. Thus, consumers find themselves unable to opt for or against purchasing renewable energy, contrary to the rules of the liberalised internal electricity market which aim to offer consumers a real choice at fair and competitive prices.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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¹ Contrary to Case [C-379/98 Preussen Elektra](#) (Press Release No [10/01](#)). In that case, the mechanism provided that the financial burden arising from the purchase obligation was shared between the electricity supply undertakings and the private electricity supply operators.