



Press and Information

General Court of the European Union
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Judgment in Case T-347/09
Germany v Commission

The General Court confirms the Commission's decision that the transfer, free of charge, by Germany, of natural heritage land to environmental protection organisations constitutes State aid

To the extent that those organisations directly offer goods and services in competitive markets, they must be regarded as undertakings

In the light of the significant costs arising from the maintenance and development of areas of natural national heritage, Germany decided to transfer, free of charge, up to 125 000 hectares of such areas to the Länder, foundations established by them, the Deutsche Bundesstiftung Umwelt (German Environment Foundation) and to other environmental protection organisations. The recipients of those transfers will have to comply with certain environmental law obligations and bear the costs relating to the transfer, maintenance costs and the risks related to contaminated sites. Where revenue from authorised exploitation of the land exceeds actual expenditure, the difference has to be paid to the federal State or reinvested in heritage conservation.

In addition, Germany had envisaged granting financial support to large-scale projects for the protection of the environment. Such projects could be proposed by any interested party, in conjunction with the competent Land, but only State bodies or environmental protection organisations could be entrusted with their management. The support granted by the federal government could not exceed 75% of a project's eligible costs and the Länder or managers of the project could make up the balance of the expenditure, 10% having, in any event, to be borne by the manager carrying out the project. Private conservation bodies could, subject to the environmental restrictions on exploitation imposed by the government, generate revenue from the land managed by them, inter alia from leases for hunting and fishing, the sale of wood from forestry maintenance activities and tourism. However, costs had to be offset against revenue from each project and, should revenue exceed costs, the balance had to be repaid to the federal State.

In 2007, Germany notified the Commission of the two measures, expecting that the Commission would find that they did not constitute State aid. However, in 2009, the Commission decided that the measures at issue did indeed constitute State aid, but that they were compatible with the common market¹.

Germany thereupon brought an action before the General Court for annulment of the Commission's decision. France, the Netherlands and Finland intervened in those proceedings in support of Germany. Germany took the view that the Commission was wrong to regard the environmental protection organisations, which do not pursue an economic aim and the object of which is an activity in the general interest, as undertakings for the purposes of EU State aid law and was wrong to find that the measures at issue confer an advantage on those organisations.

By today's judgment, the General Court dismisses the action brought by Germany.

¹ Commission Decision C(2009) 5080 final of 2 July 2009 relating to State aid NN 8/2009 granted by the Federal Republic of Germany and concerning the State aid scheme consisting of the transfer, free of charge, of certain areas of natural national heritage, and of measures for the financial support of large-scale environmental protection projects (OJ 2009 C 230, p. 1).

Even if activity for the protection of the environment, the object of the measures at issue, is exclusively social in nature and does not constitute an economic activity, the Commission was fully entitled to find that the environmental protection organisations are involved in other activities that are economic in nature and in respect of which those organisations must be regarded as undertakings. Through the activities authorised under the measures at issue – such as the sale of wood, leases for hunting and fishing and tourism – the environmental protection organisations directly offer goods and services in competitive markets. Through those activities, they pursue a separate interest, severable from the exclusively social objective of the protection of the environment. Since, in carrying out those activities, the environmental protection organisations are in competition with operators run for profit, the fact that the former offer their goods and services on a non-profit-making basis is irrelevant.

In addition, the Commission was fully entitled to find that making land, which may be exploited commercially, available free of charge, constitutes an advantage for the environmental protection organisations. A measure of this sort favours those organisations over other undertakings active in the sectors concerned and which would have to invest in land in order to carry out the same economic activities. The need to take account of requirements relating to the protection of the environment, however legitimate, cannot justify the exclusion of such selective measures from the scope of EU law on State aid. Moreover, the Commission rightly concluded that the Altmark² case-law, according to which a State measure for the benefit of an undertaking entrusted with a service of general economic interest may, under certain conditions, escape classification as State aid, does not make it possible to classify the measures at issue as not being aid.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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

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

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² Case [C-280/00](#) Altmark Trans and Regierungspräsidium Magdeburg. See also Press Release No [64/03](#).