



**The French mechanism for offsetting the additional costs arising from the obligation to purchase the electricity generated by wind turbines falls within the concept of an intervention by the State through State resources**

*The charges paid by final consumers of electricity, managed by the Caisse des dépôts et consignations, must be regarded as remaining under public control*

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

In the present case, French legislation provides that undertakings that produce wind-generated electricity in national territory are entitled to avail themselves of an obligation to purchase the electricity so generated. The undertakings required to purchase that electricity are the distributors operating the network to which the installation is connected, namely, Électricité de France ('EDF') and the non-nationalised distributors; they are obliged to purchase the electricity in question at a price higher than the market price. Consequently, that method of financing gives rise to additional costs for electricity distributors.

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

Association Vent De Colère! Fédération nationale and 11 other applicants brought the matter before the Conseil d'État (Council of State, France), considering that the mechanism for financing the purchase of electricity generated by wind turbines 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 wind turbine electricity.

According to the Conseil d'État, the purchase of the electricity generated by wind-power installations at a price higher than its market value constitutes an advantage liable to affect trade between Member States and to have an impact on competition. It has asked the Court whether the new financing mechanism put in place by French legislation must be regarded as an intervention by the State or through State resources.

In its judgment delivered today, the Court has replied that the new mechanism for offsetting in full the additional costs imposed on undertakings because of an obligation to purchase wind-generated electricity at a price higher than the market price that is financed by all final consumers of electricity constitutes an intervention through State resources. The definitive categorisation of that measure as 'State aid' is a matter for the Conseil d'État.

The Court has recalled that advantages are categorised as aid within the meaning of the Treaty<sup>1</sup> if, first, they have been granted directly or indirectly through State resources and, secondly, if that grant is attributable to the State.

The Court has found, in the first place, that **the new offset mechanism is attributable to the French State**. The French public authorities must be regarded as having been involved in the adoption of the mechanism at issue since it was established by legislation.

In the second place, **the new offset mechanism constitutes an advantage granted through State resources**.

The Court has pointed out that an advantage, although not involving the transfer of State resources, may be categorised as State aid if it is granted directly or indirectly through State resources. The concept of 'intervention through State resources' is intended to cover, in addition to advantages granted directly by the State, also those granted through a public or private body appointed by that State to administer the aid<sup>2</sup>.

In the present case, as regards *the resources being State resources*, the Court has observed that the sums intended to offset the additional costs arising from the obligation to purchase imposed on the undertakings are collected from all final consumers of electricity in France and entrusted to a public body, the CDC.

Furthermore, the amount of the charge imposed on each final consumer of electricity is determined annually by ministerial order. As the Court has previously held, funds financed through compulsory charges imposed by national legislation, managed and apportioned in accordance with the provisions of that legislation, may be regarded as State resources.

As regards *control by the CDC*, the Court has pointed out that the funds are channelled through the CDC, which centralises the sums collected in a special account before paying them out to the operators concerned, thereby acting as an intermediary in the management of those funds. Further, the CDC is under an express mandate from the French State, as a public law corporation, to provide administrative, financial and accounting management services for the Commission de régulation de l'énergie (independent administrative authority responsible for ensuring the proper functioning of the market for electricity and gas in France).

Therefore, **the sums managed by the CDC must be regarded as remaining under public control<sup>3</sup>, and thus available to the French authorities**.

Lastly, the Court has rejected France's request for the temporal effects (in the future) of the judgment delivered today to be limited.

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**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.

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<sup>1</sup> Article 107(1) TFEU.

<sup>2</sup> Case [78/76 Steinike & Weinlig](#).

<sup>3</sup> The Court has explained that the judgment delivered today must be distinguished from that in Case [C-379/98 PreussenElektra](#) in which the Court held that an obligation imposed on private electricity supply undertakings to purchase electricity produced from renewable sources at fixed minimum prices could not be regarded as an intervention through State resources where it does not lead to any direct or indirect transfer of State resources to the undertakings producing that type of electricity. Furthermore, in that case, the private undertakings had not been appointed by Germany to manage a State resource, but were bound by an obligation to purchase by means of their own financial resources. Therefore, the funds could not be considered a State resource since they were not at any time under public control and there was no mechanism established and regulated by Germany for offsetting the additional costs arising from that obligation to purchase and through which the State offered those private operators the certain prospect that the additional costs would be covered in full.

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

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