



Press and Information

General Court of the European Union

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Judgment in Case T-143/12
Germany v Commission

The General Court sets aside the Commission decision ordering Germany to recover from Deutsche Post part of the subsidies paid in respect of former civil servant postal workers' pensions

The Commission concluded that State aid had been granted, although it did not show that that public co-financing conferred a real economic advantage on Deutsche Post over its competitors

Deutsche Post is a public limited company formed in 1995 following the privatisation of the former German postal services operator, namely Postdienst (formerly Deutsche Bundespost). Deutsche Post was required to maintain the employment of Postdienst postal service workers and to contribute to a pension fund for them. Thus, in the years from 1995 to 1999, it was required to pay an amount of €2 045 billion annually into that fund. From 2000, the annual fixed amount was replaced by an amount corresponding to 33% of the total amount of the wages of the civil servants employed by Deutsche Post. The remaining balance of the cost of pensions was borne by the federal State. During the period from 1995 to 2010, the total amount of that support by the federal State amounted to more than €37 billion.

By decision of 25 January 2012,¹ the Commission held in particular² that the public financing of pensions constituted unlawful State aid incompatible with the internal market insofar as it was disproportionate. It then ordered Germany to recover the corresponding amounts from Deutsche Post, specifically the subsidies granted from 1 January 2003. The Commission found that the amount to be recovered was in the range of € 500 million to €1 billion.³

¹ Commission Decision 2012/636/EU of 25 January 2012 concerning measure C 36/07 (ex NN 25/07) implemented by Germany for Deutsche Post AG (OJ 2012 L 289, p. 1). **Reminder:** following a formal investigation procedure opened in 1999, the Commission, by decision of 19 June 2002 (2002/753/EC), held that Germany had granted Deutsche Post aid which was incompatible with the common market in the amount of € 572 million, thanks to which it was able to cover the losses resulting from a rebate policy relating to the routing of door-to-door parcels services which were open to competition. Following an action brought by Deutsche Post, the General Court annulled that decision by its judgment of 1 July 2008 in *Deutsche Post v Commission* ([T-266/02](#)) on the ground that the Commission had not established the existence of an advantage for Deutsche Post. It had in particular failed to conduct a detailed analysis of all transfers of State resources which Deutsche Post had received and all costs associated with the provision of a universal service that it had to bear in order to determine whether the transfers in question entailed overcompensation or under-compensation to its advantage or detriment. By judgment of 2 September 2010 in *Commission v Deutsche Post* ([C-399/08 P](#)), the Court of Justice dismissed the appeal brought by the Commission against the judgment of the Court of 2008. On 12 September 2007, the Commission decided to supplement the 1999 opening decision in order to conduct a comprehensive survey of all the distortions of competition resulting from the public funds granted to Deutsche Post. By judgment of 18 September 2015 in *Deutsche Post v Commission* ([T-421/07 RENV](#)), the General Court, following the decision of the Court of Justice on appeal to refer the case back to it, annulled the 2007 decision, on the basis that the Commission had reopened a formal investigation procedure which had been completely closed, in order to take a new decision without revoking or withdrawing the decision terminating the investigation. Finally, on 10 May 2011, the Commission decided to 'extend' once more the procedure opened in 1999 in order to conduct a comprehensive review of the public financing of pensions that Deutsche Post had received since 1995. Deutsche Post brought an action against that decision in 2011, which is still pending before the General Court ([T-388/11](#), *Deutsche Post v Commission*).

² In the same decision, the Commission also considered that some public financing of Deutsche Post was a State aid compatible with the internal market and that the State guarantees pursuant to which Germany guaranteed debts incurred by Deutsche Bundespost prior to its transformation into three joint stock companies should be regarded as existing aid. Those other aspects are not the subject of the present action.

³ See Commission MEMO/12/37 of 25 January 2012.

Germany⁴ brought an action against that decision⁵ before the General Court, arguing in particular that the Commission had incorrectly classified as State aid the public co-financing of pensions. In order to reach that conclusion, the Commission should first have demonstrated that the public co-financing of the pensions of postal workers whose employment was maintained by Deutsche Post was a real economic advantage for Deutsche Post over its competitors.

By today's judgment, the Court allows Germany's action and thus annuls the Commission's decision insofar as it relates to the pension-related subsidies.

The Court notes that the classification of a measure as State aid presupposes that that measure gives the recipient a selective economic advantage over its competitors. It is during the assessment of the very existence of State aid that such an advantage must be established and not at the stage where the Commission assesses downstream whether the aid is compatible with the internal market. However, it is precisely at that point that the Commission sought to establish the existence of a selective economic advantage.

The fact that Germany partially covered the cost of pensions for former civil servant postal workers is not sufficient in itself to show that Deutsche Post had an advantage over its private competitors. The pension costs of civil servants, who enjoy a privileged and costly status, are not part of the expenses which an undertaking normally incurs.

Thus, it is perfectly possible that, as a result of the public co-financing of pensions, Deutsche Post, although less disadvantaged than previously, either continues to be at a disadvantage relative to its competitors or is at parity with them, without therefore enjoying any advantage.

Only potential amounts exceeding what is necessary in order to align the pension costs imposed on Deutsche Post before 1995 with those of its competitors would have been such as to confer an advantage of that kind on it and, accordingly, constitute State aid.

Since it has not shown, at the stage of its review concerning the existence of State aid, that Deutsche Post enjoyed such an advantage, the Commission committed an error of law which entails the annulment of the part of the decision concerning the disputed pensions-related subsidies.

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.

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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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⁴ Deutsche Post also brought an action against that decision, which is still pending before the General Court (Case [T-152/12](#), *Deutsche Post v Commission*).

⁵ Only insofar as it concerns the part relating to the pensions-related subsidies.