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Press and Information

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Judgment of the Court of First Instance in Case T-92/02

Stadtwerke Schwäbisch Hall GmbH, Stadtwerke Tübingen GmbH, Stadtwerke Uelzen GmbH v Commission of the European Communities

THE GERMAN SCHEME OF TAX EXEMPTION FOR THE RESERVES SET UP BY NUCLEAR POWER STATIONS DOES NOT AMOUNT TO STATE AID

The Commission did not therefore wrongly assess that tax scheme

Nuclear power stations established in Germany are obliged by law to set up reserves to cover, first, the costs of disposing of their irradiated fuel and their radioactive waste and, second, the permanent closure of their plants. The Handelsgesetzbuch (German commercial code) states that those reserves can be counted among the liabilities of the undertaking concerned and lead to a reduction of the corresponding amount from the taxable total.

In 1999 three German electricity production and distribution utilities requested the Commission to examine the tax exemption scheme applied to those financial reserves. They claimed that that tax exemption amounted to State aid to nuclear power stations. However, following a summary examination the Commission decided that the tax measure at issue did not amount to aid of such a nature.

The three public utilities contest the Commission's decision before the Court of First Instance.

The Court of First Instance notes that the examined tax exemption amounts to an economic advantage granted through State resources in so far as the State waives its right to levy a certain amount of tax revenue.

Nevertheless, the Court of First Instance considers that **neither** the tax exemption scheme for the reserves **nor** the detailed rules for the implementation by the authorities of the tax

scheme in dispute **grant to nuclear power stations a specific advantage** inherent in the notion of State aid.

In addition, the public utilities did not establish that the amount of those reserves is to be regarded as disproportionate in the light of the scale of the expenditure that nuclear power stations necessarily incur in order to finance their public law obligation to dispose of their radioactive waste and to decommission their plants.

The Court of First Instance therefore finds that the examination of the tax scheme in dispute did not reveal any factors which would have obliged the Commission to initiate the formal procedure for detailed investigation of State aid.

In those circumstances, the Court of First Instance has dismissed the action as unfounded.

REMINDER: An appeal, limited to points of law only, may be brought before the Court of Justice of the European Communities against a decision of the Court of First Instance, within two months of its notification.

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Languages available: CS, DE, EN, FR, HU, IT, PL, SK

*The full text of the judgment may be found on the Court's internet site
<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=T-92/02>
It can usually be consulted after midday (CET) on the day judgment is delivered.*

*For further information, please contact Christopher Fretwell
Tel: (00352) 4303 3355 Fax: (00352) 4303 2731*