



Press and Information

General Court of the European Union  
**PRESS RELEASE No 165/14**  
Luxembourg, 3 December 2014

Judgment in Case T-57/11  
Castelnou Energía, SL v Commission

## **Aid to Spanish coal power plants granted in order to ensure a secure supply of electricity in Spain is compatible with EU rules on State aid**

*Where the Commission assesses an aid measure which does not pursue an environmental objective, it is not required to take into account EU rules on the protection of the environment*

In 2010, the Spanish government adopted a measure by which 10 electricity generating power plants are required to source 'indigenous' coal (that is to say, of Spanish origin) and to produce certain volumes of electricity from that coal (that is to say, 23.35 TWh per year). The price of indigenous coal is higher than the price of other fuels. It is expected that that measure will expire on 31 December 2014 at the latest.

In order to overcome the difficulties in accessing the daily electricity market faced by those power plants (those difficulties being due to the high price of the coal which the power plants are required to use), the measure introduced a 'preferential dispatch' mechanism. That mechanism provides that electricity produced by those power plants must be bought in preference to electricity produced by power plants using imported coal, fuel oil and natural gas or which operate on a combined cycle. Electricity produced by the latter group of power plants is withdrawn from the daily energy market in order to ensure the sale of electricity volumes produced from indigenous coal by the power plants benefitting from the measure.

The owners of the power plants benefitting from the measure receive compensation equal to the difference between the additional production costs which they incurred and the sale price on the daily electricity market. The mechanism is financed through a fund controlled by the State. The annual expenditure budgeted for amounts to €400 million.

After examining the measure adopted by the Spanish government, the Commission concluded that State aid was involved. However, it declared the aid to be compatible with the internal market. The Commission considered that the requirements imposed by the measure on the owners of the power plants benefitting from the measure were in keeping with the operation of a service of general economic interest, justified by the guarantee of a secure supply of electricity. Under EU law, undertakings entrusted with the operation of services of general economic interest are subject to the rules contained in the Treaties (in particular the rules on competition) only in so far as the application of those rules does not obstruct the performance of the particular tasks assigned to them. In those circumstances, the Commission decided not to raise any objections with regard to the State aid at issue in the present case.<sup>1</sup>

Castelnou Energía is the owner of a combined-cycle power plant. Its competitive position is significantly affected by the Spanish Government's measure, in particular because of the specific geographical situation of its power plant. Castelnou Energía, supported by Greenpeace-España, asks the General Court of the European Union to annul the Commission's decision.

**In today's judgment, the General Court dismisses Castelnou Energía's action.**

<sup>1</sup> Commission Decision C(2010) 4499 of 29 September 2010 concerning State aid N 178/2010 notified by the Kingdom of Spain in the form of a public service compensation linked to a preferential dispatch mechanism for indigenous coal power plants (see the Commission's [Press Release](#))

Castelnou Energía claims, inter alia, that the Commission infringed EU law in finding that the requirements imposed by the measure were in keeping with a service of general economic interest seeking to ensure a secure supply of electricity. The Court notes that **Castelnou Energía has not demonstrated that the Commission committed a manifest error of assessment in recognising the justified nature of that service and the proportionate nature of the measure having regard to the objective pursued by that service.**

Castelnou Energía also alleges that the Commission infringed a number of provisions of EU law, other than those relating to State aid, in particular provisions relating to protection of the environment. The Court states that, although the form which aid takes is inextricably linked to the objective of that aid, the Commission must assess its compatibility with provisions other than those relating to State aid. That assessment may result in a finding that the aid concerned is incompatible with the internal market. The Court makes it clear that, in the present case, the forms of the aid measures adopted by the Spanish government (that is to say, the requirement to purchase indigenous coal, the preferential dispatch mechanism and financial compensation) are inextricably linked to the objective of the aid in question. **However, where it assesses an aid measure which does not pursue an environmental objective, the Commission is not required to take account of EU rules on protection of the environment in its examination of the aid and of the forms of that aid which are inextricably linked to it. The General Court limits the verification of compliance with the rules, other than those relating to State aid, solely to those rules capable of having a negative impact on the internal market, defined as an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured. Consequently, the Commission was not required, as it did in its decision, to examine the compatibility of the measure with environmental protection provisions.**

The Court notes that **the Commission was in any event right to find in its decision that the fact that the measure resulted in an increase in CO<sub>2</sub> emissions by the indigenous coal power stations and in the price of emission allowances would not result in an overall increase in CO<sub>2</sub> emissions in Spain.** The Commission found that overall CO<sub>2</sub> emissions would, in principle, remain within the limits of the commitments made by the Spanish authorities, taking into account the emissions trading scheme put in place by EU law.<sup>2</sup> In addition, the Court states that the measure adopted by the Spanish government will result in production by indigenous coal power stations replacing as a priority that of the power stations which use fuel oil and imported coal (the most polluting power stations). In other words, the measure should, in practice, result in polluting production being replaced by other polluting production. Taking that replacement into account, **the measure adopted by the Spanish government cannot be regarded as encouraging electricity production from coal in disregard of the aim and spirit of the directive on greenhouse gas emission allowance trading.**

Finally, Castelnou Energía claims that the provisions of EU law on State aid to the coal industry<sup>3</sup> were infringed (in particular those prohibiting distortions of competition in the electricity market and those establishing the principle of digression of aid to the coal industry). In that regard, the Court states, in particular, that the principle of maintaining coal production capacity supported by State aid has been affirmed in EU law. The Court adds **that a Council decision<sup>4</sup> extended until 2018 the possibility for Member States to grant aid to cover, inter alia, costs in connection with coal for the production of electricity.**

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**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.

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<sup>2</sup> Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32).

<sup>3</sup> Council Regulation (EC) No 1407/2002 of 23 July 2002 on State aid to the coal industry (OJ 2002 L 205, p. 1)

<sup>4</sup> Council Decision 2010/787/EU of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines (OJ 2010 L 336, p. 24). That decision succeeded Regulation No 1407/2002 on the date it expired.

**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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