



Press and Information

General Court of the European Union
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Judgment in Case T-47/15
Germany v Commission

The General Court confirms that the German law on renewable energy of 2012 (the EEG 2012) involved State aid

It dismisses the action brought by Germany against the Commission decision by which the Commission classified as State aid (i) the support for undertakings producing electricity from renewable energy sources (aid which the Commission nevertheless approved) and (ii) the reduction in the EEG surcharge for certain electricity-intensive undertakings (aid which it for the most part approved)

In the present dispute,¹ Germany contests the Commission's finding that the German law on renewable energy of 2012 (the EEG 2012) involved State aid, even though the Commission, ultimately, largely approved the aid.²

The EEG 2012 laid down³ a scheme to support undertakings producing electricity from renewable energy sources and mine gas ('EEG electricity'). That law thus guaranteed those producers a price higher than the market price. In order to finance that support measure, it imposed an 'EEG surcharge' on the suppliers to the final customers, which in practice was passed on to the final customers.⁴ However, certain undertakings, such as electricity-intensive undertakings in the manufacturing sector ('EIUs'), were eligible for a cap on that (passed on) surcharge in order to maintain their international competitiveness. The EEG surcharge was payable to the interregional operators of high and very-high-voltage transmission systems (TSOs), which were obliged to sell the EEG electricity.

In its decision of 25 November 2014,⁵ the Commission found that, although the support laid down by the EEG 2012 for undertakings producing electricity from renewable energy sources constituted State aid, that aid was, however, compatible with EU law. It also classified the reduction in the EEG surcharge for electricity-intensive undertakings as State aid. Since it took the view that those reductions were for the most part compatible with EU law, it ordered recovery in respect of a limited part of the reductions only.

¹ Previously, Germany brought an action challenging the decision by which the Commission had initiated the formal investigation procedure in respect of the EEG 2012. However, following the adoption by the Commission of the decision concluding that procedure (the decision which is challenged in the present proceedings, see footnote 2), it withdrew that action (see order of the General Court 8 June 2015 in *Germany v Commission*, [T-134/14](#)). In addition, a further 50 actions challenging that decision to initiate the formal investigation procedure, brought by various undertakings, were concluded in 2015, either because the undertakings withdrew the actions or because the actions became devoid of purpose following the adoption by the Commission of the decision concluding the formal investigation procedure. Currently, a further ten actions brought by various undertakings to challenge the decision concluding the formal investigation procedure are pending before the General Court. Those actions have been stayed pending the judgment delivered by the Court today.

² Commission Decision (EU) 2015/1585 of 25 November 2014 on the aid scheme SA.33995 (2013/C) (ex 2013/NN) (implemented by Germany for the support of renewable electricity and of energy-intensive users) (OJ 2015 L 250, p. 122; see also Commission press release IP/14/2122).

³ That law applied from 1 January 2012 until 31 July 2014. From 1 August 2014 it was replaced by the EEG 2014, which the Commission approved by decision of 23 July 2014 (see Commission press release IP/14/867).

⁴ That charge represented 20% to 25% of the total amount of an average final consumer's bill.

⁵ See footnote 2.

In today's judgment, the General Court rejects all the arguments by which Germany sought annulment of the Commission's finding that the EEG 2012 involved State aid. It accordingly dismisses the action in its entirety.

According to the Court, the Commission was correct in taking the view that the reduction in the EEG surcharge for electricity-intensive undertakings conferred upon them an advantage within the meaning of EU law on State aid. That reduction released them from a charge which they would normally have had to bear. The grounds underlying an aid measure do not suffice to exclude the measure at the outset from classification as aid.

Furthermore, the Commission was correct in taking the view that the EEG 2012 involved State resources.

The mechanisms under the EEG 2012 result, principally, from implementation of a public policy, laid down by the State through the EEG 2012, to support producers of EEG electricity. First, the funds generated by the EEG surcharge and administered collectively by the TSOs remain under the dominant influence of the public authorities; second, the amounts in question, generated by the EEG surcharge, are funds which involve a State resource and can be assimilated to a levy; and, third and last, it may be concluded from the powers and tasks given to the TSOs that they do not act freely and on their own behalf, but as administrators (assimilated to an entity executing a State concession) of aid granted through State funds.

In this connection, the Court points out that the EEG 2012 is substantially different from the mechanism established by the previous German law, which was the subject matter of the judgment of the Court of Justice in *PreussenElektra*⁶ – a judgment in which the Court ruled out the existence of State aid. The funds at issue in that case could not be considered to be a State resource since they were not at any time under public control and there was no mechanism (such as that at issue in the present case), established and regulated by the State, for offsetting the additional costs arising from the obligation to purchase and through which the State offered the private operators concerned the certain prospect that the additional costs would be covered in full.

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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⁶ Case: [C-379/98](#) *PreussenElektra*, see also Press Release No [10/2001](#): an obligation to purchase at minimum prices does not constitute State aid merely because it is imposed by statute.