



Press and Information

General Court of the European Union
PRESS RELEASE No 104/18
Luxembourg, 12 July 2018

Judgment in Case T-356/15
Austria v Commission

The General Court confirms the decision by which the Commission approved the aid provided by the UK in favour of the Hinkley Point C nuclear power station

The General Court accordingly dismisses the action brought by Austria, supported by Luxembourg

By decision of 8 October 2014,¹ the Commission approved aid which the UK was planning to implement in favour of unit C of the nuclear power station at Hinkley Point (situated in Somerset, on the coast of the UK) for the purpose of creating new capacity for the generation of nuclear energy. This unit is scheduled to enter into service in 2023 and its operational life is calculated to be 60 years.

That aid, which is made up of three parts, is envisaged for the future operator of unit C, the company NNB Generation (a subsidiary of EDF Energy).

First, a 'contract for difference'² seeks to ensure price stability for sales of electricity and to guarantee compensation in the event of an early shutdown of the nuclear power station. Second, an agreement between the investors of NNB Generation and the UK's Secretary of State for Energy and Climate Change guarantees compensation in the event of an early shutdown on political grounds.³ Third, a credit guarantee by the UK on bonds to be issued by NNB Generation is intended to ensure the timely payment of principal and interest of qualifying debt, up to a maximum level of 17 billion pounds sterling (GBP).

In its decision, the Commission concluded that the aid in question is compatible with the internal market.⁴ According to the Commission, that aid is necessary in order to attain, in good time, the objective of creating new nuclear energy generating capacity, it being understood that the risk of distortion of competition is limited and that the negative effects of the aid in question are offset by its positive effects.

Austria has sought annulment of that decision before the General Court. In the course of the proceedings, Luxembourg intervened in support of Austria, while the Czech Republic, France, Hungary, Poland, Romania, Slovakia and the UK intervened in support of the Commission.

By today's judgment, the General Court dismisses the action brought by Austria.

The General Court notes first of all that the **rules of the European Union on State aid are applicable to measures relating to the area of nuclear energy**, such as those at issue.

¹ Commission Decision (EU) 2015/658 of 8 October 2014 on the aid measure SA.34947 (2013/C) (ex 2013/N) which the UK is planning to implement for support to the Hinkley Point C nuclear power station (OJ 2015 L 109, p. 44; see also the Commission's Press Release IP/14/1093).

² The parties to that contract are NNB Generation and the company Low Carbon Contracts, an entity which will be financed by way of a statutory obligation imposed on all the licensed electricity suppliers collectively.

³ The advantage identified by the Commission is confined to a special contractual right allowing investors to obtain rapid and secure payment. The payment of compensation, as such, based on the principles underlying UK law and EU law, does not, according to the Commission, constitute State aid.

⁴ Within the meaning of Article 107(3)(c) TFEU, under which aid may be declared compatible with the internal market if it is aimed at the development of an activity that constitutes a public-interest objective and it is appropriate, necessary and not disproportionate.

However, in the context of the application of those rules, it is necessary to take into account the provisions and objectives of the Euratom Treaty.

Next, with regard to Austria's argument that the promotion of nuclear electricity does not constitute an objective of 'common' interest capable of justifying aid for the development of a certain activity, the General Court states that the objective pursued by a Member State must be one of public interest and not solely an objective in the private interest of the beneficiary of the aid. By contrast, it need not necessarily be an interest of all the Member States or of a majority of them. Consequently, **the Commission did not err in taking the view that the UK was entitled to define the development of nuclear energy as being a public-interest objective, even though that objective is not shared by all of the Member States.**

The General Court notes in this regard that the objective of promoting nuclear power, and, more specifically, of promoting the creation of new nuclear energy production capacities, is related to the Euratom Community's goal of facilitating investment in the nuclear field. Furthermore, it follows from the FEU Treaty that **each Member State has the right to choose between the different energy sources those which it prefers.**

With regard to Austria's argument that the technology used at Hinkley Point C is not new, the General Court finds that **neither the rules on State aid nor the Euratom Treaty require that the existence of technological innovation be established.** In any event, it is common ground that the technology to be used in Hinkley Point C is more advanced than that used in the nuclear power stations which it is supposed to replace.

The General Court also rejects Austria's arguments to the effect that the intervention of the UK is not necessary. According to the General Court, **the Commission acted correctly in law in concluding that, given the lack of market-based financial instruments and other types of contracts that could hedge against the substantial risks⁵ to which investments in nuclear energy are subject, State intervention was necessary in order to create, in good time, new nuclear energy generating capacity.**

So far as the **proportionality of the aid in question** is concerned, the General Court finds, inter alia, that Austria has failed to invalidate the Commission's findings that it was unrealistic to expect that a comparable amount of wind energy generation capacity could be constructed within the same time frame as that envisaged for the construction of Hinkley Point C, given the intermittent nature of that source of renewable energy.

Moreover, **Austria has been unable to show that the weighing up, by the Commission, of the positive and negative effects of the measures at issue is vitiated by a manifest error.** The General Court points out in this regard that the UK has the right to determine its own energy mix and to maintain nuclear energy as a source in that mix, and that the project to build Hinkley Point C is intended solely to prevent a drastic fall in the contribution of nuclear energy to overall electricity needs.

With regard to the **characterisation of the measures at issue**, the General Court notes that these are intended to allow NNB Generation to commit to investing in the construction of Hinkley Point C, and it states in this regard that there is nothing to preclude an aid measure which pursues a public interest objective, which is appropriate to and necessary for the attainment of that objective and which does not adversely affect trading conditions to an extent contrary to the common interest, from being declared compatible with the internal market, irrespective of whether it must be characterised as investment aid or as operating aid.

Finally, the General Court rejects Austria's argument that the UK ought to have launched a tendering procedure for the Hinkley Point C project. **The measures in question do not constitute**

⁵ These risks are linked in particular to high upfront capital costs, lengthy construction periods, the long period of operation to recover the investment costs, as well as to the extremely long and complex life cycles, the uncertain evolution of wholesale prices, decommissioning costs and the 'hold-up' risk.

a public contract or a concession, but a mere subsidy, since they do not allow the UK to require NNB Generation either to build Hinkley Point C or to supply electricity.

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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