



Press and Information

Court of Justice of the European Union  
**PRESS RELEASE No 44/19**  
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Judgment in Case C-405/16 P  
Germany v Commission

## **The Court of Justice annuls the Commission decision stating that the German law on renewable energy of 2012 (the EEG 2012) involved State aid**

*The Commission failed to establish that the advantages provided for by the EEG 2012 involved State resources and therefore constituted State aid*

In 2012, Germany, by means of a law on renewable energy (EEG 2012), introduced a scheme to support undertakings producing electricity from renewable energy sources and mine gas (herein known after as 'EEG electricity').

That law guaranteed<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

By its decision of 25 November 2014<sup>4</sup>, the Commission found that the EEG 2012 involved State aid, while approving it to a large extent.

According to the Commission, although the support for undertakings producing EEG electricity constitutes State aid, it is 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.

Germany brought an action against that decision before the General Court which the General Court dismissed by its judgment of 10 May 2016.<sup>5</sup>

Germany then brought an appeal against that judgment before the Court of Justice.

**In today's judgment, the Court of Justice upholds the appeal, sets aside the judgment of the General Court and annuls the Commission decision.**

**According to the Court of Justice, the General Court was wrong to find that the funds generated by the EEG surcharge constituted State resources.**

<sup>1</sup> 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).

<sup>2</sup> That charge represented 20% to 25% of the total amount of an average final consumer's bill.

<sup>3</sup> The EEG surcharge represents any difference between the price obtained by the TSOs on the spot market of the EEG electricity exchange which they feed into their network and the financial burden imposed on them by the statutory obligation to pay for that electricity at the rates laid down by law, a difference that the TSOs are entitled to require the suppliers to the final customers to pay.

<sup>4</sup> 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).

<sup>5</sup> Case Germany v Commission [T-47/15](#) ; see also Press Release No. [49/16](#).

**It follows that a factor required in order to classify as ‘aid’ advantages resulting from the mechanisms established by the EEG 2012 is lacking.<sup>6</sup>**

On the one hand, the EEG surcharge cannot be assimilated to a levy since the EEG 2012 does not require suppliers to final customers to pass on the amounts paid in respect of the EEG surcharge to those customers. The fact that ‘in practice’ the financial burden resulting from the EEG surcharge was passed on to the final customers is not sufficient in that regard.

On the other hand, the General Court failed to establish that the State held a power of disposal over the funds generated by the EEG surcharge or even that it exercised public control over the TSOs responsible for managing those funds.

The Court of Justice finds in particular that the fact that the funds from the EEG surcharge are allocated exclusively to the financing of the support and compensation schemes, by virtue of the provisions of the EEG 2012, tends rather to show that the State was specifically not entitled to dispose of those funds, that it is say to decide on a different allocation. Moreover, while the factors accepted by the General Court permit the conclusion that the public authorities monitor the proper implementation of the EEG 2012, they cannot, by contrast, permit the conclusion that there is public control over the funds generated by the EEG surcharge.

For the same reasons, the Court of Justice holds **that the Commission failed to establish that the advantages provided for by the EEG 2012 involved State resources and therefore constituted State aid.**

The Court of Justice therefore not only sets aside the judgment of the General Court but also annuls the Commission decision.

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**NOTE:** An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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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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*Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106*

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<sup>6</sup> For it to be possible to classify advantages as ‘aid’ within the meaning of Article 107(1) TFEU, they must be granted directly or indirectly through State resources and be attributable to the State