



## **Advocate General Hogan: the Court should reject Austria's appeal in UK State Aid Case**

*The General Court was fully entitled to dismiss the challenge to the decision of the Commission to approve the aid measures granted by the UK in respect of the construction of Hinkley Point C nuclear power station*

By decision of 8 October 2014<sup>1</sup>, 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. On 12 July 2018<sup>2</sup>, the General Court dismissed annulment proceedings brought by Austria<sup>3</sup> against that decision.

Not being satisfied with the judgment Austria lodged an appeal with the Court of Justice, seeking to have it set aside. **In today's Opinion Advocate General Gerard Hogan finds that the General Court was fully entitled to dismiss the challenge to the decision of the Commission to approve the aid measures in question granted by the UK in respect of the construction of Hinkley Point C. Consequently, he proposes that the Court should dismiss the appeal brought by Austria in respect of the judgment of the General Court.**

Advocate General Hogan notes that the Euratom Treaty has the same standing as the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) as far as the primary law of the EU is concerned and that these two treaties apply in all areas of EU law that have not been dealt with by the Euratom Treaty. He finds that there is nothing in the Euratom Treaty dealing with the issue of State aid and adds that he deems it appropriate that rules contained in the TFEU concerning competition and State aid should apply to the nuclear energy sector when the Euratom Treaty does not contain specific rules.

The Advocate General then notes that the Euratom Treaty provisions necessarily envisage the development of nuclear power plants. He concludes that the argument advanced by Austria to the effect that those provisions of the Euratom Treaty do not cover either the building of further nuclear power plants or the replacement and modernisation of ageing plants by more modern, already developed technologies cannot be accepted.

He finds furthermore that **the development of nuclear power is, as reflected in the Euratom Treaty, a clearly defined objective of EU law, and that objective cannot be subordinated to other objectives of EU law, such as the protection of the environment.** Additionally, he notes that the clear words of the Treaty plainly acknowledge the right of each Member State to choose between different energy sources and 'the general structure of its energy supply' and that right necessarily extends to the right of each Member State to develop nuclear power as part of its energy supply sources.

<sup>1</sup> Commission Decision on the aid measure SA.34947 (2013/C) (ex 2013/N) which the United Kingdom is planning to implement for support to the Hinkley Point C nuclear power station (OJ 2015 L 109, p. 44).

<sup>2</sup> Case [T-356/15](#) Austria v. Commission, see also Press Release No. [104/18](#)

<sup>3</sup> In the course of the proceedings before the General Court, Luxembourg intervened in support of Austria, while the Czech Republic, France, Hungary, Poland, Romania, Slovakia and the UK intervened in support of the Commission

In the Advocate General's view, the requirement adopted by the General Court in a series of recent cases whereby any state aid approved pursuant to the TFEU must serve a common interest is not specified in the text of the relevant treaty article<sup>4</sup>. It follows, therefore, that there is no requirement that the aid has to fulfil any purposes beyond those specifically set out in the said article. According to its wording and the position of the provision in the TFEU, **aid, in order to be compatible with the Treaty, neither has to pursue an 'objective of common interest' nor an 'objective of public interest'. It only has to 'facilitate the development of certain economic activities' and it must not 'adversely affect trading conditions to an extent contrary to the common interest'**

Advocate General Hogan notes that, in any event, by accepting the objectives of the Euratom Treaty, all Member States have clearly signified their unqualified acceptance in principle of the right of other Member States to develop nuclear power plants on their own territories should they wish to do so. A clearly stated Treaty objective of this kind must be capable of constituting an objective of common interest for the purposes of the application of the State aid rules.

Insofar as the analysis by the General Court is concerned, Advocate General Hogan deems that it was fully entitled to find that there was abundant evidence before the Commission that the market was either unwilling or even incapable of coming up with finance for Hinkley Point C absent the guarantees and other forms of aid provided by the UK. He finds that **the General Court did not err when it concluded that the production of nuclear energy was the relevant economic activity for the purposes of state aid rules.**

The task of the Commission in State aid cases is simply to assess whether the State measure in question 'may be considered to be compatible with the internal market'. That task is essentially to consider the compatibility of the aid in question with the rules on competition and the internal market and not, as such, the rules pertaining to the environment.

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**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**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 Opinion is published on the CURIA website on the day of delivery.

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<sup>4</sup> Article 107(3)(c) of the Treaty on the Functioning of the European Union