



Press and Information

Court of Justice of the European Union  
**PRESS RELEASE No 112/20**  
Luxembourg, 22 September 2020

Judgment in Case C-594/18 P  
Austria v Commission

## **The Court of Justice confirms the Commission decision approving United Kingdom aid for Hinkley Point C nuclear power station**

By decision of 8 October 2014,<sup>1</sup> **the European Commission approved aid which the United Kingdom is planning for Hinkley Point C nuclear power station**, located in Somerset, on the United Kingdom coast ('Hinkley Point C'), **with the aim of creating new nuclear energy generating capacity**. Hinkley Point C is scheduled to enter into service in 2023, with an operational life of 60 years. The aid, which is in three parts, is envisaged for the future operator of Hinkley Point C, NNB Generation Company Limited ('NNB Generation'), a subsidiary of EDF Energy plc.

The first of the measures at issue is a 'contract for difference',<sup>2</sup> which is intended to ensure price stability for electricity sales during the operational phase of Hinkley Point C. The second is an agreement between NNB Generation's investors and the United Kingdom's Secretary of State for Energy and Climate Change, guaranteeing compensation in the event of an early shutdown of the nuclear power station on political grounds. The third consists of a credit guarantee by the United Kingdom on bonds to be issued by NNB Generation and is intended to ensure the timely payment of principal and interest of qualifying debt.

In its decision, the Commission classified those three measures as State aid compatible with the internal market pursuant to Article 107(3)(c) TFEU. Under that provision, aid to facilitate the development of certain economic activities or of certain economic areas may be considered to be compatible with the internal market provided that it does not adversely affect trading conditions to an extent contrary to the common interest.

**Austria sought the annulment of that decision before the General Court of the European Union, which, however, dismissed its action** by a judgment of 12 July 2018.<sup>3</sup>

**Hearing an appeal brought by Austria, <sup>4</sup> **the Court of Justice was, essentially, called upon to answer the question, not previously addressed in the case-law, whether the construction of a nuclear power station may benefit from State aid approved by the Commission pursuant to Article 107(3)(c) TFEU. Dismissing the appeal, the Court answered that question in the affirmative.****

The Court, first of all, pointed out that, in order to be declared compatible with the internal market under Article 107(3)(c) TFEU, State aid must meet two conditions, the first being that it must be intended to facilitate the development of certain economic activities or of certain economic areas

---

<sup>1</sup> Commission Decision (EU) 2015/658 of 8 October 2014 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> The parties to this contract are NNB Generation and Low Carbon Contracts Ltd, an entity that will be funded through a statutory obligation on all licensed electricity suppliers collectively.

<sup>3</sup> Judgment of 12 July 2018, Austria v Commission, [T-356/15](#); see also Press Release No [104/18](#).

<sup>4</sup> As was the case before the General Court, Luxembourg intervened in support of Austria in the proceedings before the Court of Justice, whereas the Czech Republic, France, Hungary, Poland, Slovakia and the United Kingdom intervened in support of the Commission.

and the second being that it must not adversely affect trading conditions to an extent contrary to the common interest. That provision **does not**, on the other hand, **require planned aid to pursue an objective of common interest**. Accordingly, the Court rejected as unfounded Austria's various arguments to the effect that the construction of a new nuclear power station does not constitute an objective of common interest.

The Court also confirmed that, in the absence of specific rules in the Euratom Treaty, the rules of the FEU Treaty on State aid are applicable in the nuclear energy sector. Nor, contrary to what the General Court held, does the Euratom Treaty preclude the application in that sector of the rules of EU law on the environment, and therefore **State aid for an economic activity falling within the nuclear energy sector that is shown upon examination to contravene environmental rules cannot be declared compatible with the internal market**. The error of law thereby committed by the General Court had no effect, **however**, on the soundness of the judgment under appeal, since **the principle of protection of the environment, the precautionary principle, the 'polluter pays' principle and the principle of sustainability, relied on by Austria in support of its action for annulment, cannot be regarded as precluding, in all circumstances, the grant of State aid for the construction or operation of a nuclear power plant**. The Court of Justice held, in essence, that such an approach would not be compatible with the second subparagraph of Article 194(2) TFEU, from which it follows that **a Member State is free to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply, and which does not preclude that choice from being nuclear energy**.

Next, the Court rejected Austria's argument that the General Court defined the relevant economic activity for the purposes of Article 107(3)(c) TFEU incorrectly. In that regard, the Court of Justice held that the generation of nuclear energy, which the measures at issue are intended to develop, does indeed constitute an economic activity within the meaning of that provision. The Court of Justice, furthermore, pointed out that identification of the product market within which the activity covered by the aid falls is relevant when verifying that the aid does not adversely affect trading conditions to an extent contrary to the common interest, which is the second condition upon which that provision makes the compatibility of aid dependent. In the present instance, the Commission had identified the liberalised market for the generation and supply of electrical power as being the market affected by the planned measures.

Nor did the General Court err in law in holding that, while the existence of a failure of the market concerned by the planned aid may be a relevant factor for declaring the aid compatible with the internal market, the absence of such a failure does not necessarily mean that the aid is incompatible with the internal market.

So far as concerns the review of the proportionality of the planned aid for Hinkley Point C, the Court of Justice, first of all, pointed out that the General Court examined the proportionality of the measures at issue in the light of the United Kingdom's electricity supply needs whilst rightly confirming that **the United Kingdom was free to determine the composition of its own energy mix**. When **examining the condition that the planned aid must not adversely affect trading conditions to an extent contrary to the common interest**, the Commission did not, moreover, have to take into account the negative effect which the measures at issue may have on the implementation of the principle of protection of the environment, the precautionary principle, the 'polluter pays' principle and the principle of sustainability relied on by Austria. Without prejudice to the check that the activity supported does not infringe the rules of EU law on the environment, examination of that condition **does not require the Commission to take into account any negative effects other than the negative effects of the aid on competition and trade between Member States**.

Finally, the Court confirmed that, when checking that the measures at issue were compatible with the internal market, neither the Commission nor the General Court was required to characterise them formally as 'investment aid', which may satisfy the conditions for application of Article 107(3)(c) TFEU, or 'operating aid', the authorisation of which under that provision is in principle precluded.

---

**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.

---

*Unofficial document for media use, not binding on the Court of Justice.*

The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355

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