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Judgment of the Court in Joined Cases C-702/20 | DOBELES HES and C-17/21 | GM

### The establishment as such of State aid cannot result from a judicial decision

On 5 May 2004, Latvia adopted a Law (in force from 8 June 2004 to 31 December 2014) seeking to amend the procedure applicable to the sale by electricity producers of surplus production at an increased tariff. That law provided that producers of electricity from renewable energy sources who had already commenced their activity at that date were to continue to benefit from the previous conditions, which were essentially more favourable so far as concerns the prices applied to sale at the increased tariff. DOBELES HES SIA and GM SIA are two Latvian undertakings which operate hydroelectric power plants producing electricity from renewable energy sources. Following the entry into force of that Law, the Latvian regulatory authority with the power to determine the average electricity price interpreted that Law as having the effect of blocking, for those producers, the average electricity sale price at its value in force on 7 June 2005. That authority therefore ceased to update that price.

That led the applicant undertakings to claim from the regulatory authority payment of ‘damages’ as compensation for the losses sustained as a result of the blocking of the tariff. The regulatory authority refused to grant those claims but the Latvian administrative courts granted in part the action brought by those undertakings.

Seised of an appeal on a point of law, the Latvian Supreme Court requested the Court of Justice to interpret Article 107(1) and Article 108(3) TFEU, the Regulation on *de minimis* aid <sup>1</sup> (State aids of a low amount which need not be notified to the Commission) and the Regulation laying down detailed rules for the application of Article 108 TFEU. <sup>2</sup>

**First, the Court held that there are two alternative criteria enabling the identification of ‘State resources’, whose mobilisation is required for there to be ‘State aid’ within the meaning of Article 107(1) TFEU: these are either funds financed by a levy or other compulsory surcharges under national legislation and managed and apportioned in accordance with that legislation, or sums which constantly remain under public control.**

The Court observes in this connection that the date of complete liberalisation of the electricity market in Latvia is irrelevant for the purpose of determining whether the advantage constituted by the purchase of electricity at an increased tariff must be characterised as State aid. **Classification as ‘State aid’ is not subject to the condition that the market concerned has first been fully liberalised.**

The Court also points out that State aid, which constitutes measures of the public authority favouring certain undertakings or certain products, is fundamentally different in its legal nature from the damages which the national

<sup>1</sup> Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ 2013 L 352, p. 1).

<sup>2</sup> Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ 2015 L 248, p. 9).

authorities may be ordered to pay to individuals in compensation for the harm they have caused to those individuals. Thus, damages do not constitute State aid within the meaning of EU law. On the other hand, it is irrelevant, for the purpose of determining whether sums correspond to 'State aid', whether actions seeking payment of those sums are classified as 'claims for compensation' or as 'claims for damages' under national law.

Moreover, where national legislation has established 'State aid', the payment of a sum claimed before the courts in accordance with that legislation also constitutes such aid.

In response to arguments submitted by the Commission, **the Court holds that the establishment as such of State aid cannot result from a judicial decision. That establishment entails a decision as to the appropriate course of action which falls outside the scope of a court's powers and obligations.**

As regards, next, the applicability of EU law covering *de minimis* aids, the Court observes that it is in the light of the total amount of the sums already received and the sums still claimed by the applicants during the reference period that, assuming those amounts constitute State aid, the *de minimis* nature of the aid at issue in the main proceedings must be assessed.

Lastly, where the national court is seised of a request seeking the payment of aid which is unlawful, that is to say, aid that was not notified to the Commission even though it does not constitute *de minimis* aid, it must reject such a request. However, the national court may grant a request seeking the payment of a sum corresponding to new aid which has not been notified to the Commission, provided that that aid is first duly notified by the national authorities concerned to that institution and that the latter gives, or is deemed to have given, its consent in that regard.

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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

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

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