



PRESS RELEASE No 116/25

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Judgment of the Court in Case C-59/23 P | Austria v Commission (Paks II nuclear power station)

The Court of Justice annuls the Commission's decision to approve aid from Hungary for the Paks II nuclear power station

The Commission should have ascertained whether the direct award of the contract for the construction of two new reactors to a Russian undertaking complies with EU public procurement rules

The Court of Justice sets aside, following an appeal lodged by Austria, the judgment delivered by the General Court of the European Union in the present case, and annuls the decision of the European Commission approving aid from Hungary for the development of two new nuclear reactors at the Paks nuclear power station site. Since the construction of the two reactors forms part of the object of the aid and the direct award of the construction contract to a Russian undertaking is inextricably linked to that object, the Commission should have ascertained whether that direct award, made without a public tender procedure, complies with EU public procurement rules.

By decision of 6 March 2017, ¹ the European Commission approved investment aid which Hungary intended to grant to the State-owned company MVM Paks II ² for the development of two new nuclear reactors at the Paks nuclear power station site. Those new reactors were gradually to replace the four existing reactors. MVM Paks II was intended to become, free of charge, the owner and operator of the two new reactors. Their construction was to be financed entirely by the Hungarian State.

The construction of the new reactors was entrusted, by means of a direct award, ³ to the Russian company Nizhny Novgorod Engineering, ⁴ in accordance with an agreement between Russia and Hungary on cooperation on the peaceful use of nuclear energy. Russia also agreed under that agreement to provide Hungary with a State loan in order to finance most of the development of the new reactors. ⁵

Austria ⁶ contested the Commission's approval decision ⁷ before the General Court. By judgment of 30 November 2022, ⁸ the General Court dismissed the action. Austria ⁹ subsequently lodged an appeal with the Court of Justice against the judgment of the General Court.

The Court of Justice sets aside the judgment of the General Court and **annuls the approval decision of the Commission.**

The Court of Justice holds, in particular, that, contrary to what the General Court ruled, the Commission could not confine itself to ascertaining whether the aid at issue complies with the EU rules on State aid, **but should have also ascertained whether the direct award of the contract for the construction of the two new nuclear reactors complies with EU public procurement rules.**

The construction of the two reactors forms an integral part of the aid measure notified by Hungary, aimed at the provision of those reactors free of charge to MVM Paks II. Moreover, the direct award of the construction contract was indispensable for the attainment of the objective of that aid and is thus an aspect that is inextricably linked to

it.¹⁰

The Court points out that the organisation of an open tender procedure for the award of a contract for the construction of infrastructure can have an impact, inter alia, on the cost of the investment required for that construction and on the properties of that infrastructure. Accordingly, such a procedure may influence the extent of any advantage granted to an undertaking or group of undertakings by that means.

Furthermore, in so far as the Commission took the view, in the approval decision, that, in any event, the direct award of the construction contract complied with the rules on public procurement, that decision is not sufficiently reasoned. The mere reference to the infringement proceedings that the Commission had initiated against Hungary in 2015 in respect of the direct award of the construction contract and had closed by taking the view that that award complied with the rules on public procurement is not sufficient because it does not make it possible to understand the specific reasons leading to that conclusion.

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, and, as the case may be, the abstract](#) 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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¹ [Commission Decision \(EU\) 2017/2112](#) of 6 March 2017 on the measure/aid scheme/State aid SA.38454 – 2015/C (ex 2015/N) which Hungary is planning to implement for supporting the development of two new nuclear reactors at Paks II nuclear power station.

² MVM Paks II Nuclear Power Plant Development Private Company Limited by Shares.

³ That is to say, without a public tender procedure.

⁴ Nizhny Novgorod Engineering Company Atomenergoproekt.

⁵ Russia undertook to provide a revolving credit facility of €10 billion. Hungary was to provide an additional amount of €2.5 billion from its own budget.

⁶ Supported by Luxembourg.

⁷ The Commission was supported by Hungary, the Czech Republic, France, Poland, Slovakia and the United Kingdom.

⁸ Judgment of the General Court of 30 November 2022, *Austria v Commission*, [T-101/18](#) (see also Press Release [No 192/22](#)).

⁹ Again supported by Luxembourg. The Commission, on the other hand, was supported by Hungary, the Czech Republic, France and Poland.

¹⁰ According to the case-law of the Court of Justice, the Commission must take into account infringements of provisions of EU law other than those relating to State aid where such an infringement arises from the economic activity financed, from the aid or from its object as such or from aspects inextricably linked to the object to the aid.