Case C-379/98

PreussenElektra AG

v

Schleswag AG

(Reference for a preliminary ruling from the Landgericht Kiel)

(Electricity — Renewable sources of energy — National legislation requiring electricity supply undertakings to purchase electricity at minimum prices and apportioning the resulting costs between those undertakings and upstream network operators — State aid — Compatibility with the free movement of goods)

Summary of the Judgment

1. *Preliminary rulings — Jurisdiction of the Court — Limits — Obviously irrelevant questions and hypothetical questions in a context which precludes any useful answer — Questions not related to the purpose of the main proceedings*
(EC Treaty, Art. 177 (now Art. 234 EC))

2. *State aid — Meaning — Advantage granted to producers of electricity from renewable energy sources, resulting from the statutory obligation imposed on private electricity supply undertakings to buy their production at a minimum price higher than its value — Advantage granted without transfer of public resources — Excluded*
(EC Treaty, Art. 92(1) (now, after amendment, Art. 87(1) EC))

3. *State aid — Treaty provisions — Scope — Relationship between Article 92 of the Treaty (now, after amendment, Article 87 EC) and the second paragraph of Article 5 of the Treaty (now the second paragraph of Article 10 EC)*
(EC Treaty, Art. 92 (now, after amendment, Art. 87 EC) and Article 5, second para. (now Art. 10, second para., EC))

4. *Free movement of goods — Quantitative restrictions — Measures having equivalent effect — Price systems — Legislation requiring private electricity supply undertakings to purchase, at a minimum price higher than its value, electricity produced in their supply area from renewable energy sources — Whether permissible*
(EC Treaty, Art. 30 (now, after amendment, Art. 28 EC))

1. In the context of the cooperation between the Court of Justice and the national courts provided for by Article 177 of the Treaty (now Article 234 EC), it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted by the national court concern the interpretation of Community law, the Court of Justice is, in principle, bound to give a ruling.

Nevertheless, the Court may in exceptional circumstances examine the conditions in which the case was referred to it by the national court, in order to assess whether it has jurisdiction. The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of Community law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it.

(see paras 38-39)

2. Only advantages granted directly or indirectly through State resources are to be considered aid within the meaning of Article 92(1) of the Treaty (now, after amendment, Article 87(1) EC). The distinction made in that provision between 'aid granted by a Member State' and aid granted 'through State resources' does not signify that all advantages granted by a State, whether financed through State resources or not, constitute aid but is intended merely to bring within that definition both advantages which are granted directly by the State and those granted by a public or private body designated or established by that State.

3. Article 92 of the Treaty (now, after amendment, Article 87 EC) is in itself sufficient to prohibit the conduct by States referred to therein and Article 5 of the Treaty (now Article 10 EC), the second paragraph of which provides that Member States are to abstain from any measure which could jeopardise the attainment of the objectives of the Treaty, cannot be used to extend the scope of Article 92 to conduct by States that does not fall within it, such as support measures decided upon by the State but financed by private undertakings.

(see paras 63, 65)

Therefore, statutory provisions of a Member State which, first, require private electricity supply undertakings to purchase electricity produced in their area of supply from renewable energy sources at minimum prices higher than the real economic value of that type of electricity, and, second, distribute the financial burden resulting from that obligation between those electricity supply undertakings and upstream private electricity network operators do not constitute State aid within the meaning of Article 92(1) of the EC Treaty.

(see para. 58 and operative part 1)

4. In the current state of Community law concerning the electricity market, statutory provisions of a Member State which, first, require private electricity supply undertakings to purchase electricity produced in their area of supply from renewable energy sources at minimum prices higher than the real economic value of that type of electricity, and, second, distribute the financial burden resulting from that obligation between those electricity supply undertakings and upstream private electricity network operators are not incompatible with Article 30 of the EC Treaty (now, after amendment, Article 28 EC), such provisions being useful for protecting the environment in so far as the use of renewable energy sources

which they are intended to promote contributes to the reduction in emissions of greenhouse gases which are amongst the main causes of climate change which the European Community and its Member States have pledged to combat.

(see paras 73, 81 and operative part, 1-2)