The European Court of Justice (ECJ) ruled on 13 March 2001 that German legislation imposing an obligation to purchase electricity produced from wind power in Northern Germany is not State aid within the meaning of the Treaty.

In this judgement, the Court was seen to give clear priority to the European Union’s political objectives – in this case, the combating of global warming – over the smooth functioning of the Internal Market which is affected by the German electricity legislation.

A German Statute from 1990 and amended in 1994 and 1998 requires public electricity supply undertakings to purchase electricity produced within their area of supply from renewable sources, including wind energy, at minimum prices which are higher than the real economic value of that type of energy.

The German Government notified the initial draft law to the Commission in 1990 who authorised it, holding it to be in accordance with the energy policy aims of the Community. That system was amended in 1998 whereby a mechanism was established for allocating extra costs due to that purchase obligation between power suppliers and upstream electricity network operators.

The purchase obligation involved an additional cost for the regional electricity supply company in question, which rose from DM 5.8 million in 1991 to approximately DM 111.5 million in 1998. In accordance with the allocation mechanism laid down by the German statute, the company applied to PreussenElektra for payment of certain sums, which it had already spent in accordance with its purchase obligation.

PreussenElektra brought an action before the Regional Court in Kiel for the recovery of DM 500,000, representing the sum paid to the supply company in compensation for the additional costs caused by the purchase of wind electricity. It claimed that payment was contrary to Community law, since it amounted to applying an amended system of State aid that had not been notified to the Commission.

The Regional Court in Kiel asked the Court of Justice of the European Communities whether the amendment of the statutory system did indeed constitute an amendment of aid within the meaning of Community law, and whether the system thus established was contrary to the prohibition on quantitative restrictions on trade.

The Court recalled the Opinion of the Advocate-General that aid granted by States or through State resources in any form whatsoever, which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is incompatible with the Treaty. It ruled that: “Only aid granted directly or indirectly through State resources constitutes aid within the meaning of the Treaty”. The Court considered that neither the statutory obligation introduced by the German rules, nor the allocation of the financial burden between private supply undertakings and private operators of upstream electricity networks “involved a direct or indirect transfer of State resources”.

With regard to the second issue, the Court of Justice ruled that the rules were “capable, at least potentially, of hindering intra-Community trade”, but “they are aimed in particular at protecting the environment by contributing to the reduction of emissions of greenhouse gases.” Therefore, the objective of those rules appears among the priority objectives of the Community. In those circumstances, and in the current state of Community law applicable to the electricity market, the Court held that the German rules were not contrary to the free movement of goods.

Community officials agreed that the ruling would have an impact on other energy and transport issues currently under discussion. (MJ)

The European Commission has adopted a series of action plans to integrate the protection of biodiversity into EU agricultural, fishery, environment and development policies. The plans define concrete actions and measures and set measurable targets to ensure a reversal of the accelerated loss of biodiversity experienced in all Member States and worldwide.

The action plans stem from the EU Biodiversity Strategy adopted in 1998, whereby the Commission promised to lay down exactly how it would achieve the objectives of the Strategy, and implement the 1992 Convention on Biological Diversity.

The Community Biodiversity Strategy defines a framework for action and focuses on integration of biodiversity...
concerns into relevant sectoral policies, such as agriculture, fisheries, conservation of natural resources and economic and development cooperation.

The four new action plans outline the necessary steps to tackle the loss in biodiversity in the relevant sectoral areas. They also establish how to identify appropriate indicators for monitoring and evaluating performance in the implementation of the actions and measures envisaged and their effectiveness.

The action plan on conservation of natural resources sets out how it intends to use general environment instruments, such as the water framework Directive, the Strategy for Integrated Coastal Zone Management and environmental impact assessment, to help preserve biodiversity across the whole of the European Union. It also indicates specific environment initiatives for monitoring and assessing the overall effects on biodiversity from integration efforts in other sectors.

The action plan focuses on enhancing opportunities and synergies with relevant international agreements and processes. In particular,

- the Convention on International Trade in Endangered Species (CITES);
- the Climate Change and Desertification Conventions;
- the Barcelona and OSPAR Conventions on marine protection;
- the Cartagena Protocol on Biosafety;
- the Montreal Protocol on substances that deplete the ozone layer;
- the World Trade Organisation (WTO)/TRIPS;
- the UN Food and Agricultural Organisation (FAO); and
- the international process on forests.

The action plan on agriculture begins with an analysis of the interrelations between farming and biological diversity. It indicates seven priorities to achieve reciprocal benefits between farming activities and biodiversity. These are:

- Ensuring a reasoned intensification in agricultural practices.
- Maintaining an economically viable and socially acceptable agricultural activity, in particular in biodiversity-rich areas, where these activities have been weakened.
- Using the potential of agri-environmental measures for the conservation and sustainable use of biodiversity.
- Ensuring the existence of an ecological infrastructure at the level of the whole territory.
- Supporting actions aimed at the enhancement of genetic diversity in agriculture and in the maintenance of local and traditional varieties and breeds.
- Encouraging the marketing of primitive species and varieties that are naturally adapted to the local and regional conditions.
- Preventing the abundance and spreading of non-native species.

The action plan on fisheries considers the threats due to both conventional fisheries and aquaculture activities. The measures in this short-to-medium-term action plan have been identified at three levels:

- The conservation and sustainable use of fish stocks.
- The protection of non-target species, habitats and ecosystems from fishing activities.
- Preventing aquaculture having an impact on different ecosystems.

With regard to the first two levels, the required measures include a reduction in fisheries activity, the application of technical measures, as well as the strengthening of research and monitoring. For aquaculture, measures seek to reduce the environmental impact of fish farming, limit the introduction of alien invasive species, secure animal health and strengthen research to enhance knowledge in this area.

The action plan on economic and development cooperation focuses on poverty eradication as biodiversity and development are interlinked.

The plan notes that the major part and most threatened areas of global biodiversity lie in the forests, wetlands and coral reefs of developing countries, which are being destroyed in the rush for short-term development. In the action plan, the EU states its responsibility to help these countries to preserve the natural resources essential to the well-being of their societies. It notes the need for improved links with EU Member States and international development cooperation agencies, programmes and institutions in the Member States and at international level. It also considers the need for building up capacity to manage development and environment issues within the Commission.

The action plan lists “guiding principles” that need to be followed and sets out the actions to be taken in three inter-linked contexts:

- In intensive production systems (agriculture, livestock, aquaculture, tree plantations, etc.), with attention to their life-support functions and services, maintenance of genetic diversity, and caution regarding alien invasive species and living modified organisms.
- In production systems involving non-domesticated species (forestry, wildlife, fisheries, etc.) where the focus should be on maintaining an array of ecosystems and habitats in productive landscapes.
- In protected areas, where stronger links are needed between conservation action and sustainable development strategies.

The action plan also emphasises the importance of improving the use of Strategic Environmental Assessments (SEAs) and Environmental Impact Assessments (EIAs), and focuses on support for building up capacity in this field. (MJ)