

ECJ

Ruling on Renewable Energy

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 Com-

munity 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)

