

Action brought on 2 May 2014 — Energiewerke Nord v Commission**(Case T-288/14)**

(2014/C 223/43)

*Language of the case: German***Parties**

Applicant: Energiewerke Nord GmbH (Rubenow, Germany) (represented by: T. Volz, M. Ringel, B. Wißmann, M. Püstow, C. Oehme and T. Wielsch, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul the decision of the European Commission of 18 December 2013 to open the formal investigation procedure under Article 108(2) TFEU against the Federal Republic of Germany regarding the support for renewable electricity and the reduced EEG-surcharge for energy-intensive users, State aid SA.33995 (2013/C) (ex 2013/NN), in so far as it applies to the reduction of the EEG-surcharge for energy-intensive users;
- order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on two pleas in law.

1. First plea in law: No advantage within the meaning of Article 107(1) TFEU

- The applicant claims that the reduction of the EEG-surcharge for energy-intensive users, provided for in the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources, hereinafter referred to as EEG), does not constitute aid within the meaning of Article 107(1) TFEU. In this context, the applicant states that energy-intensive users are not favoured by the arrangement. The special compensation regime is, instead, compensation for exceptional costs which affect the applicant and comparable users to a special degree in the context of the support for renewable electricity, and is intended to re-establish the competitiveness of energy-intensive users who were initially considerably adversely affected by the EEG-surcharge.

2. Second plea in law: No State resources within the meaning of Article 107(1) TFEU

- In addition, the applicant claims that the special compensation regime does not constitute a measure granted 'by a Member State or through State resources'. The applicant states, in this context, that the EEG-surcharge is not a State resource and that even a waiver of those resources by the special compensation regime cannot therefore constitute a measure granted through State resources.
- The EEG-surcharge is not collected, administered or even allocated by the State or by a public or private institution nominated or established by the State. Instead, the EEG-surcharge can be directly collected by the transmission system operators on the basis of a corresponding entitlement under civil law. The EEG-surcharge does not benefit the State budget, and consequently the special compensation regime in no way indirectly or directly reduces State revenue.
- The EEG-resources are also not available to State authorities. There is also no public control over the EEG-resources, such as by the Bundesamt für Wirtschaft und Ausfuhrkontrolle (Federal Office of Economics and Export Control, BAFA) or the Bundesnetzagentur (Federal Network Agency).