



Reports of Cases

Case C-574/14

PGE Górnictwo i Energetyka Konwencjonalna S.A.
v
Prezes Urzędu Regulacji Energetyki

(Request for a preliminary ruling from the Sąd Najwyższy)

(Reference for a preliminary ruling — State aid — Power Purchase Agreements — Compensation paid for voluntary termination — Commission decision finding State aid compatible with the internal market — Assessment of the lawfulness of aid by a national court — Annual adjustment of stranded costs — Point at which an energy generator's membership of a group of undertakings is taken into account)

Summary — Judgment of the Court (Fifth Chamber), 15 September 2016

1. *State aid — Respective powers of the Commission and the national courts — Role of the national courts — Commission decision finding a State aid regime compatible — Power of the national courts to review the lawfulness of that regime at the time of its implementation — None — Power of the national courts to seek clarifications from the Commission or to make a reference to the Court for a preliminary ruling*

(Art. 4(3) TEU; Arts 107 TFEU, 108(2) and (3) TFEU and 267, second and third subparas TFEU; Commission Decision 2009/287, Art. 4(2); Commission Communication relating to the methodology for analysing State aid linked to stranded costs)

2. *State aid — Respective powers of the Commission and the national courts — Role of the national courts — Annual adjustment of the stranded costs compensation to be paid to a generator that is a member of a group of undertakings — Taking into account of an energy generator's membership of a group of undertakings at the point of that adjustment and not at the point of the assessment of the compensation regime's compatibility with the internal market*

(Art. 4(3) TEU; Arts 107 TFEU and 108 TFEU; Commission Decision 2009/287, Art. 4(1) and (2))

1. Article 107 TFEU and Article 4(3) TEU, read together with Article 4(2) of Decision 2009/287 on State aid awarded by Poland as part of Power Purchase Agreements and the State aid which Poland is planning to award concerning compensation for the voluntary termination of Power Purchase Agreements must be interpreted as precluding, where the Commission has assessed a State aid scheme in the light of the Communication relating to the methodology for analysing State aid linked to stranded costs, and classified it as being compatible with the internal market before its implementation, national authorities and courts from reviewing in turn, at the time the State aid in question is implemented, whether it is consistent with the principles set out in that methodology.

Indeed, the assessment of the compatibility of whether aid measures or a State aid regime with the internal market falls within the exclusive competence of the Commission, subject to review by the Courts of the European Union, national courts having to refrain from taking decisions which conflict with a decision of the Commission, even if it is provisional.

That being the case, to allow national courts, in the context of the implementation of a State aid scheme, to review the compatibility of such a scheme, which a Commission Decision has already established compatible with the internal, would amount in essence to giving those courts the power to substitute their own assessment for that of the Commission.

Furthermore, to accept that national courts may undertake such an assessment would in fact have the consequence that those courts would exceed the limits of their own jurisdiction aimed at ensuring compliance with EU law on State aid and would be in breach of their duty of sincere cooperation with the institutions of the European Union on State aid. Indeed, it is conceivable that the assessment undertaken by the national court in question would lead it to take a decision that runs counter to the decision, which is final, made by the Commission.

Nevertheless, if a national court entertains doubts regarding the interpretation of a decision of the Commission which classified a specific measure as State aid, that court may seek clarification from that institution or, depending on the circumstances, may or must, in accordance with the second and third paragraphs of Article 267 TFEU, refer a question to the Court of Justice for a preliminary ruling on the interpretation of Article 107 TFEU.

(see paras 32-34, 36, 37, 40, 41, operative part 1)

2. Article 4(1) and (2) of Decision 2009/287 on State aid awarded by Poland as part of Power Purchase Agreements and the State aid which Poland is planning to award concerning compensation for the voluntary termination of Power Purchase Agreements, read in the light of the Communication relating to the methodology for analysing State aid linked to stranded costs must be interpreted as meaning that, in circumstances characterised by the change in structure of the group of undertakings covered by that decision, when calculating the annual adjustment of the stranded costs compensation to be paid to a generator that is a member of a group of undertakings, account must be taken of that membership and, therefore, the financial results of that group, on the date when adjustment is carried out.

Given that Decision 2009/287, in accordance with Article 4(2) thereof, is based on the Stranded Costs Methodology and that it is designed to apply to stranded costs compensation owed for the 2006 to 2025 period, it must be held that it follows the same evolutionary logic as that methodology and must therefore be interpreted in accordance with a 'dynamic' approach. Accordingly, the annual adjustment of stranded costs compensation must be undertaken by reference to the actual situation of the market at the time that amount is calculated, which entails an assessment of developments in competition in the market concerned. It follows that any changes in the ownership structure of companies that generate electricity fall within the scope of that decision and, accordingly, must be taken into account by the national authorities or courts when they carry out the correction of the annual amount of stranded costs compensation.

(see paras 51-53, 56, operative part 2)