

Parties to the main proceedings

Applicant: ET acting as insolvency administrator of Air Berlin PLC & Co. Luftverkehrs KG

Defendant: Bundesrepublik Deutschland

Operative part of the judgment

Article 3e of Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, as amended by Regulation (EU) 2017/2392 of the European Parliament and of the Council of 13 December 2017, must be interpreted as meaning that the number of greenhouse gas emission allowances allocated free of charge to an aircraft operator must, in the event of cessation of that operator's aviation activities during the period of greenhouse gas emission allowance trading in question, be reduced in proportion to the part of that period during which those activities are no longer carried out.

⁽¹⁾ OJ C 255, 3.8.2020.

Judgment of the Court (Fifth Chamber) of 27 January 2022 (request for a preliminary ruling from the Curtea de Apel București — Romania) — Fondul Proprietatea SA v Guvernul României, SC Complexul Energetic Hunedoara SA, in liquidation, SC Complexul Energetic Oltenia SA and Compania Națională de Transport al Energiei Electrice 'Transelectrica' SA

(Case C-179/20) ⁽¹⁾

(Reference for a preliminary ruling — Internal market in electricity — Directive 2009/72/EC — Article 15(4) — Priority dispatch — Security of supply — Article 32(1) — Free third-party access — Guaranteed access to transmission systems — Directive 2009/28/EC — Article 16(2) — Guaranteed access — Article 107(1) TFEU — Article 108(3) TFEU — State aid)

(2022/C 119/11)

Language of the case: Romanian

Referring court

Curtea de Apel București

Parties to the main proceedings

Applicant: Fondul Proprietatea SA

Defendants: Guvernul României, SC Complexul Energetic Hunedoara SA, in liquidation, SC Complexul Energetic Oltenia SA and Compania Națională de Transport al Energiei Electrice 'Transelectrica' SA

Intervener: Ministerul Economiei, Energiei și Mediului de Afaceri

Operative part of the judgment

1. Article 32(1) of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC must be interpreted as not precluding a Member State from granting certain electricity producers whose installations use indigenous primary energy fuel sources a right of guaranteed access to transmission systems in order to ensure security of electricity supply, provided that that right of guaranteed access is based on objective and reasonable criteria and is proportionate to the legitimate aim pursued, which it is for the referring court to ascertain.

2. Article 107(1) TFEU must be interpreted as meaning that a series of measures introduced by a government decision and consisting of, first, priority dispatch by the system operator, in which the State has the majority shareholding, of the electricity generated by certain electricity producers whose installations use indigenous primary energy fuel sources, second, guaranteed access to transmission systems for the electricity generated by those producers' installations, and, third, an obligation for those producers to provide ancillary services for a certain quantity of megawatts to the system operator, which is to reserve for them a right to supply that quantity at prices fixed in advance and deemed to exceed the prices on the market, may be classified as 'State aid' within the meaning of Article 107(1) TFEU. If this is the case, such a series of measures must be regarded as new aid and is, on that ground, subject to the obligation of prior notification to the European Commission, in accordance with Article 108(3) TFEU.

(¹) OJ C 297, 7.9.2020.

Judgment of the Court (Grand Chamber) of 25 January 2022 (request for a preliminary ruling from the Nejvyšší soud — Czech Republic) — VYSOČINA WIND a.s. v Česká republika — Ministerstvo životního prostředí

(Case C-181/20) (¹)

(Reference for a preliminary ruling — Environment — Directive 2012/19/EU — Waste electrical and electronic equipment — Obligation to finance the costs relating to the management of waste from photovoltaic panels — Retroactive effect — Principle of legal certainty — Incorrect transposition of a directive — Liability of the Member State)

(2022/C 119/12)

Language of the case: Czech

Referring court

Nejvyšší soud České republiky

Parties to the main proceedings

Applicant: VYSOČINA WIND a.s.

Defendant: Česká republika — Ministerstvo životního prostředí

Operative part of the judgment

1. Article 13(1) of Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment (WEEE) is invalid in so far as it imposes on producers the obligation to finance the costs relating to the management of waste from photovoltaic panels placed on the market between 13 August 2005 and 13 August 2012.

Article 13(1) of Directive 2012/19 must be interpreted as precluding national legislation which imposes on users of photovoltaic panels, and not on producers of those panels, the obligation to finance the costs relating to the management of waste from such panels placed on the market from 13 August 2012, the date on which that directive entered into force.

2. EU law must be interpreted as meaning that the fact that a Member State adopted legislation contrary to an EU directive prior to the adoption of that directive does not constitute, in itself, a breach of EU law, since the achievement of the result prescribed by the directive cannot be regarded as seriously compromised before the directive forms part of the EU legal order.

(¹) OJ C 222, 6.7.2020.