Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

12 January 2023 *

(Reference for a preliminary ruling – State aid – Article 107(1) TFEU – National legislation imposing an obligation on the public operator to purchase from renewable energy producers at a price higher than the market price – Failure to pay a portion of the aid concerned – Application for compensation submitted by those producers to a public authority distinct from that which is, in principle, required, under that national legislation, to pay that aid and whose budget is intended solely to ensure its own operation – New aid – Notification requirement – *De minimis* aid – Regulation (EU) No 1407/2013 – Article 5(2) – Cumulation – Taking into account the amounts of aid already received during the reference period on the basis of that national legislation)

In Joined Cases C-702/20 and C-17/21,

TWO REQUESTS for a preliminary ruling under Article 267 TFEU from the Augstākā tiesa (Senāts) (Supreme Court, Latvia), made by decisions of 18 December 2020 and 7 January 2021, received at the Court on 22 December 2020 and 11 January 2021, respectively, in the proceedings

'DOBELES HES' SIA (C-702/20)

Sabiedrisko pakalpojumu regulēšanas komisija (C-17/21)

intervening parties:

Sabiedrisko pakalpojumu regulēšanas komisija,

Ekonomikas ministrija,

Finanšu ministrija,

'GM' SIA,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, A. Prechal, K. Jürimäe, L.S. Rossi, M.L. Arastey Sahún, Presidents of Chambers, M. Ilešič, J.-C. Bonichot (Rapporteur), N. Piçarra, I. Jarukaitis, A. Kumin, N. Jääskinen, N. Wahl, M. Gavalec and O. Spineanu-Matei, Judges,

Advocate General: A. Rantos,

* Language of the case: Latvian.

Registrar: C. Di Bella, Administrator,

having regard to the written procedure and further to the hearing on 29 March 2022,

after considering the observations submitted on behalf of:

– 'DOBELES HES' SIA and 'GM' SIA, by J. Vaits,

– the Sabiedrisko pakalpojumu regulēšanas komisija, by E. Bergmane, I. Birziņš, J. Miķelsons and A. Ozola,

– the Latvian Government, by E. Bārdiņš, J. Davidoviča, I. Hūna and K. Pommere, acting as Agents,

– the German Government, by J. Möller, A. Hoesch et R. Kanitz, acting as Agents,

– the Spanish Government, by M.J. Ruiz Sánchez, acting as Agent,

– the Netherlands Government, by K. Bulterman and M.A.M. de Ree, acting as Agents,

– the European Commission, by A. Bouchagiar, G. Braga da Cruz, I. Naglis and I. Rubene, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 June 2022,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Article 107(1) TFEU, Article 108(3) TFEU, Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 [TFEU] to *de minimis* aid (OJ 2013 L 352, p. 1) and Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 [TFEU] (OJ 2015 L 248, p. 9).

2 The references have been made in two sets of proceedings between, on the one hand, 'DOBELES HES' SIA and 'GM' SIA respectively ('the applicants in the main proceedings'), and, on the other hand, the Sabiedrisko pakalpojumu regulēšanas komisija (Public Services Regulatory Commission, Latvia; 'the regulatory authority'), concerning the setting of the purchase price for electricity by the authorised distribution undertaking at too low a tariff in respect of the period from 1 March 2006 to 30 November 2007 with regard to DOBELES HES and in respect of the period from 1 March 2006 to 30 September 2008 with regard to GM.

Legal context

European Union law

The Treaty of Accession and the Act of Accession

3 The Treaty between the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland (Member States of the European Union) and the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia, the Slovak Republic, concerning the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union (OJ 2003 L 236, p. 17), was signed by the Republic of Latvia on 16 April 2003 and entered into force on 1 May 2004 ('the Treaty of Accession').

4 Under Article 1(2) of the Treaty of Accession, the conditions of admission and the adjustments to the Treaties on which the European Union is founded are set out in the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ 2003 L 236, p. 33; 'the Act of Accession').

5 Article 22 of the Act of Accession, which, in the same way as the other provisions of that act, is an integral part of the Treaty of Accession, provides that the measures listed in Annex IV are to be applied under the conditions laid down in that annex.

6 Point 3(1) of Annex IV to the Act of Accession provides:

'The following aid schemes and individual aid put into effect in a new Member State before the date of accession and still applicable after that date shall be regarded upon accession as existing aid within the meaning of Article [108(1) TFEU]:

(a) aid measures put into effect before 10 December 1994;

(b) aid measures listed in the Appendix to this Annex;

(c) aid measures which prior to the date of accession were assessed by the State aid monitoring authority of the new Member State and found to be compatible with the *acquis*, and to which the [European] Commission did not raise an objection on the ground of serious doubts as to the compatibility of the measure with the common market, pursuant to the procedure set out in paragraph 2.

All measures still applicable after the date of accession which constitute State aid and which do not fulfil the conditions set out above shall be considered as new aid upon accession for the purpose of the application of Article [108(3) TFEU].

…'

7 Point 3(2) of Annex IV to the Act of Accession establishes the applicable procedure where a new Member State wishes the Commission to examine aid under the procedure referred to in paragraph 1(c) of that point, providing that it must communicate with the Commission in that case regularly. According to paragraph 3 of that point, a Commission decision to object to a measure, within the meaning of paragraph 1(c) of the same point, is to be regarded as equivalent to a decision to initiate the formal investigation procedure within the meaning of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [108 TFEU] (OJ 1999 L 83, p. 1).

Regulation No 1407/2013

8 Article 3 of Regulation No 1407/2013, entitled '*De minimis* aid', provides:

'1. Aid measures shall be deemed not to meet all the criteria in Article 107(1) [TFEU], and shall therefore be exempt from the notification requirement in Article 108(3) [TFEU], if they fulfil the conditions laid down in this Regulation.

2. The total amount of *de minimis* aid granted per Member State to a single undertaking shall not exceed EUR 200 000 over any period of three fiscal years.

…'

9 Article 5(2) of that regulation is drafted as follows:

'*De minimis* aid shall not be cumulated with State aid in relation to the same eligible costs or with State aid for the same risk finance measures, if such cumulation would exceed the highest relevant aid intensity or aid amount fixed in the specific circumstances of each case by a block exemption regulation or a decision adopted by the Commission. *De minimis* aid which is not granted for or attributable to specific eligible costs may be cumulated with other State aid granted under a block exemption regulation or a decision adopted by the Commission.'

10 Article 7 of that regulation, entitled 'Transitional provisions', provides, in paragraph 1 thereof:

'This Regulation shall apply to aid granted before its entry into force if the aid fulfils all the conditions laid down in this Regulation. Any aid which does not fulfil those conditions will be assessed by the Commission in accordance with the relevant frameworks, guidelines, communications and notices.'

Regulation 2015/1589

11 Article 1 of Regulation 2015/1589 provides:

'For the purposes of this Regulation, the following definitions shall apply:

(a) "aid" means any measure fulfilling all the criteria laid down in Article 107(1) TFEU;

(b) "existing aid" means:

(i) without prejudice to Articles 144 and 172 of the Act [concerning the conditions] of Accession of [the Republic of] Austria, [the Republic of] Finland and [the Kingdom of] Sweden [and the adjustments to the Treaties on which the European Union is founded (OJ 1994 C 241, p. 21, and OJ 1995 L 1, p. 1)], to point 3 and the Appendix of Annex IV to the [Act of Accession], to points 2 and 3(b) and the Appendix of Annex V to the Act [concerning the conditions] of Accession of [the Republic of] Bulgaria and Romania [and the adjustments to the Treaties on which the European Union is founded (OJ 2005 L 157, p. 203)], and to points 2 and 3(b) and the Appendix of Annex IV to the Act [concerning the conditions] of Accession of [the Republic of] Croatia [and the adjustments to the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community (OJ 2012 L 112, p. 21)], all aid which existed prior to the entry into force of the TFEU in the respective Member States, that is to say, aid schemes and individual aid which were put into effect before, and are still applicable after, the entry into force of the TFEU in the respective Member States;

(ii) authorised aid, that is to say, aid schemes and individual aid which have been authorised by the Commission or by the Council [of the European Union];

(iii) aid which is deemed to have been authorised pursuant to Article 4(6) of Regulation [No 659/1999] or to Article 4(6) of this Regulation, or prior to Regulation [No 659/1999] but in accordance with this procedure;

(iv) aid which is deemed to be existing aid pursuant to Article 17 of this Regulation;

(v) aid which is deemed to be an existing aid because it can be established that at the time it was put into effect it did not constitute an aid, and subsequently became an aid due to the evolution of the internal market and without having been altered by the Member State. Where certain measures become aid following the liberalisation of an activity by Union law, such measures shall not be considered as existing aid after the date fixed for liberalisation;

(c) "new aid" means all aid, that is to say, aid schemes and individual aid, which is not existing aid, including alterations to existing aid;

…'

12 Article 2 of that regulation, entitled 'Notification of new aid', is drafted as follows:

'1. Save as otherwise provided in regulations made pursuant to Article 109 TFEU or to other relevant provisions thereof, any plans to grant new aid shall be notified to the Commission in sufficient time by the Member State concerned. The Commission shall inform the Member State concerned without delay of the receipt of a notification.

2. In a notification, the Member State concerned shall provide all necessary information in order to enable the Commission to take a decision pursuant to Articles 4 and 9 …'

13 Article 3 of that regulation, entitled 'Standstill clause', provides:

'Aid notifiable pursuant to Article 2(1) shall not be put into effect before the Commission has taken, or is deemed to have taken, a decision authorising such aid.'

14 Article 17 of the same regulation, which is entitled 'Limitation period for the recovery of aid', provides:

'1. The powers of the Commission to recover aid shall be subject to a limitation period of 10 years.

2. The limitation period shall begin on the day on which the unlawful aid is awarded to the beneficiary either as individual aid or as aid under an aid scheme. Any action taken by the Commission or by a Member State, acting at the request of the Commission, with regard to the unlawful aid shall interrupt the limitation period. Each interruption shall start time running afresh. The limitation period shall be suspended for as long as the decision of the Commission is the subject of proceedings pending before the Court of Justice of the European Union.

3. Any aid with regard to which the limitation period has expired shall be deemed to be existing aid.'

Latvian law

15 Article 40(1) of the Enerģētikas likums (Law on Energy) of 3 September 1998 (*Latvijas Vēstnesis*, 1998, No 273), in the version in force during the period from 1 June 2001 to 7 June 2005 inclusive (*Latvijas Vēstnesis*, 2001, No 83), provides:

'Approved electricity distribution undertakings shall purchase from small hydroelectric plants, located in their approval area and the capacity of which does not exceed two megawatts and provided that the operation of those plants and their equipment commenced before 1 January 2003, the surplus electricity produced by those plants, once their own needs have been satisfied and in accordance with the national electricity quality parameters, for a period of eight years as of the start of operation of the electricity plant concerned, at a price corresponding to twice the average electricity sale price. The price of such a purchase shall then be set by the regulatory authority.'

16 Article 30(1) of the Elektroenerģijas tirgus likums (Law on the electricity market) of 5 May 2005 (*Latvijas Vēstnesis*, 2005, No 82), in the version in force during the period from 8 June 2005 to 31 December 2014 inclusive, provides:

'Producers using renewable energy sources for the generation of electricity who started trading before the entry into force of the present Law shall sell electricity to the public operator in accordance with the requirements concerning the mode of operation, with the supply deadlines and with the prices that applied to them on the entry into force of the present Law.'

17 Article 30(3) of that law, in the version in force during the period from 8 June 2005 to 14 May 2008 inclusive, provides:

'The public operator shall keep separate records of the volume and cost of the electricity purchased in accordance with the detailed rules laid down in paragraphs 1 and 2 of the present provision. The price of that purchase shall be borne by all electricity end customers in Latvia in proportion to their electricity consumption, where a proportion of the electricity produced from renewable energy sources is sold to the public operator or where the cost borne by that operator is subject to compensation.'

18 Article 29(1) of the likums 'Par sabiedrisko pakalpojumu regulatoriem' (Law on public service regulatory authorities) of 19 October 2000 (*Latvijas Vēstnesis*, 2000, No 394), provides:

'The operation of the regulatory authority shall be funded by income from the collection of the State fee for the regulation of public services ('the State fee') and from payments for the services provided by the regulatory authority, which are set out in other legislative and regulatory provisions.'

19 Article 30 of that law provides:

'1. In order to ensure regulation of public services, all public service providers in regulated sectors shall pay the State fee.

2. The State fee for regulated sectors shall be paid into the State budget and credited to the regulatory authority's account with the Treasury. The State fee paid in regulated sectors shall be intended solely to ensure the operation of that authority.'

The disputes in the main proceedings and the questions referred for a preliminary ruling

20 The applicants in the main proceedings operate hydroelectric power plants and thus produce electricity from renewable energy sources.

21 Until 7 June 2005, Article 40(1) of the Law on Energy provided that, subject to certain conditions, electricity producers were entitled to sell their surplus electricity production to the approved electricity distribution undertaking at a price corresponding to twice the average electricity sale price.

22 That provision applied to the applicants in the main proceedings.

23 The average electricity price was determined by the regulatory authority, an independent body governed by public law created by the Law on public service regulatory authorities. That regulatory authority has its own legal personality, acts autonomously and manages its own budget, which is approved by legislative means.

24 The Law on the electricity market, in the version in force from 8 June 2005, amended the procedure applicable to the sale by electricity producers of surplus production at an increased price. Nevertheless, Article 30(1) of that law provided that producers of electricity from renewable energy sources who had already commenced their activity at that date were to continue to benefit from the previous conditions, as regards in particular prices.

25 The regulatory authority interpreted that provision as having the effect of blocking, for those producers, the average electricity sale price at its value in force on 7 June 2005 and therefore ceased to update that price. From 8 June 2005, the applicants in the main proceedings thus sold their surplus production at a price corresponding to twice the average electricity sale price in force at that date, the regulatory authority no longer having updated that price as from that date.

26 However, by decision of 20 January 2010, the Latvijas Republikas Satversmes tiesa (Constitutional Court, Latvia) found that the term 'prices' used in Article 30(1) of the Law on the electricity market had to be understood as a price-fixing mechanism, and not as a fixed price, and that the interpretation that, after the entry into force of the Law on the electricity market, the regulatory authority was no longer competent to set the average electricity sale price, was incorrect.

27 The applicants in the main proceedings claimed from the regulatory authority payment of 'damages' as compensation for the losses sustained as a result of the failure to fix the price concerned as from 8 June 2005. The harm alleged corresponds to the difference between the price paid to the applicants in the main proceedings by the public operator and the price at which the latter should have purchased electricity from them if the average electricity sale price had been correctly fixed for the period from 1 March 2006 to 30 November 2007, in the case of DOBELES HES, and for the period from 1 March 2006 to 30 September 2008, in the case of GM.

28 When the regulatory authority refused to pay them the corresponding sums, the applicants in the main proceedings brought an action before the administrative judicature in 2011. By judgments of 31 May 2019 and of 10 July 2019, the Administratīvā apgabaltiesa (Regional Administrative Court, Latvia) upheld in part the applications of DOBELES HES and GM and ordered the regulatory authority to pay them the sums of EUR 3 406.63 and EUR 662.26 respectively. Taking the view, however, that the payment of State aid was involved, the Administratīvā apgabaltiesa (Regional Administrative Court) made the payment of those sums subject to the condition that the Commission had taken, or could be deemed to have taken, a decision authorising such aid. In the course of the proceedings, it had sought an opinion from the Commission on the application of Articles 107 and 108 TFEU, which had been delivered to that effect on 12 December 2018.

29 The regulatory authority lodged an appeal on a point of law against those judgments before the referring court. In those circumstances, the Augstākā tiesa (Senāts) (Supreme Court, Latvia) decided to stay the proceedings in the two cases in the main proceedings and to refer the following questions, formulated identically in both cases, to the Court of Justice for a preliminary ruling:

'(1) Must the obligation imposed on the public operator to purchase electricity at a price higher than the market price from producers who use renewable energy sources to generate electricity, relying on the obligation imposed on the end consumer to pay in proportion to use, be deemed to constitute intervention by the State or through State resources for the purposes of Article 107(1) [TFEU]?

(2) Is the concept of "liberalisation of the market in electricity" to be interpreted as meaning that liberalisation must be deemed to have already occurred where certain aspects of free trade exist, such as, for example, contracts concluded by a public operator with suppliers from other Member States? Can liberalisation of the market in electricity be deemed to begin when the law grants some electricity users (for example, electricity users connected to the transport network or non-domestic electricity users connected to the distribution network) the right to change electricity distributor? What effect do developments in the regulation of the electricity market in Latvia have on the assessment of aid granted to electricity producers in the light of Article 107(1) [TFEU] (for the purposes of the answer to question 1), in particular, the situation prior to 2007?

(3) If the answers to questions 1 and 2 make clear that the aid granted to electricity producers does not constitute State aid within the meaning of Article 107(1) [TFEU], do the fact that the applicant now operates in a liberalised electricity market and the fact that the payment of compensation would now afford it an advantage over other operators present on the market concerned mean that compensation for the loss must be treated as State aid within the meaning of Article 107(1) [TFEU]?

(4) If the answers to questions 1 and 2 make clear that the aid granted to electricity producers is State aid within the meaning of Article 107(1) [TFEU], must it be considered, in the context of the supervision of State aid provided for in that provision, that the applicant's claim for compensation for the loss sustained due to failure to respect fully the statutory right to receive a higher payment for electricity generated constitutes a request for new State aid or a request for payment of the portion of State aid not previously received?

(5) If question 4 is answered to the effect that the claim for compensation must be assessed, in the context of past circumstances, as a request for payment of the portion of State aid not previously received, does it follow from Article 107(1) [TFEU] that, at the present time, in order to adjudicate on the payment of that State aid, it is necessary to examine the current market situation and to take account of the legislation in force (including the limitations currently in existence to prevent overcompensation)?

(6) Is it significant, for the purposes of the interpretation of Article 107(1) [TFEU], that wind power plants, unlike hydroelectric power plants, have benefited in the past from the full amount of aid?

(7) Is it significant, for the purposes of the interpretation of Article 107(1) [TFEU], that only some of the hydroelectric power plants which have not received the full amount of aid should now receive compensation?

(8) Must Article 3(2) and Article 7(1) of [Regulation No 1407/2013] be interpreted as meaning that, since the amount of the aid at issue in the present case does not exceed the threshold for *de minimis* aid, that aid should be considered to fulfil the criteria laid down for *de minimis* aid? Must Article 5(2) of Regulation No 1407/2013 be interpreted as meaning that, in the present case, in view of the conditions for preventing overcompensation set out in Commission Decision SA.43140 [of 24 April 2017 – Support to renewable energy and CHP in Latvia (NN/2015) (OJ 2017 C 176, p. 2)], the treatment of the payment of damages as *de minimis* aid is liable to create unacceptable cumulation?

(9) If the view is taken in the present case that State aid was granted or paid, must Article 1(b) and (c) of [Regulation 2015/1589] be interpreted as meaning that circumstances like those of the present case amount to new State aid and not existing State aid?

(10) If question 9 is answered in the affirmative, in order to assess whether the applicant's situation matches that of aid which is deemed to be existing aid, as referred to in Article 1(b)(iv) of Regulation 2015/1589, must account be taken solely of the date on which the aid was effectively paid as the starting point of the limitation period for the purposes of Article 17(2) of Regulation 2015/1589?

(11) If it is considered that State aid has been granted or paid, must Article 108(3) [TFEU] and Articles 2(1) and (3) of Regulation 2015/1589 be interpreted as meaning that a procedure to notify State aid like that at issue in the present case is deemed to be appropriate where the national court upholds the claim for compensation for the loss sustained on condition that a notification has been received of a decision from the Commission which approves the aid concerned and directs the Ministry of the Economy to forward to the Commission, within two months of delivery of the judgment, the relevant declaration of that aid for the business activity?

(12) Is it significant, for the purpose of interpreting Article 107(1) [TFEU], that compensation for the loss sustained is claimed from a public sector body ([the regulatory authority]) which, historically, has not had to bear such costs, and also that that body's budget is made up of State fees paid by public service providers belonging to regulated sectors which must be ringfenced for regulatory activity?

(13) Is a compensation scheme like that at issue in the present case compatible with the principles contained in EU law and applicable to regulated sectors, in particular Article 12 and recital 30 of Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) [(OJ 2002 L 108, p. 21)], as amended by Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 [(OJ 2009 L 337, p. 37)]?'

Consideration of the questions referred

The first question

30 By its first question, the referring court asks, in essence, whether Article 107(1) TFEU must be interpreted as meaning that national legislation which obliges the approved electricity distribution undertaking to purchase electricity generated from renewable energy sources at a price higher than the market price and which provides that the resulting additional costs are financed by a compulsory surcharge borne by final consumers constitutes an intervention 'through State resources' within the meaning of that provision.

31 It must be recalled that classification as 'State aid' within the meaning of Article 107(1) TFEU requires four conditions to be satisfied, namely, that there be intervention by the State or 'through State resources', that the intervention be liable to affect trade between Member States, that that intervention confer a selective advantage on the beneficiary and that the same intervention distort or threaten to distort competition (judgment of 2 March 2021, *Commission* v *Italy and Others*, C-425/19 P, EU:C:2021:154, paragraph 57 and the case-law cited).

32 The first question referred relates solely to the first of those conditions. In that regard, it should be noted that, according to settled case-law, a measure may be classified as an intervention by the State or as aid granted 'through State resources' if, first, the measure is granted directly or indirectly through those resources and, secondly, the measure is imputable to a Member State (see, to that effect, judgment of 2 March 2021, *Commission* v *Italy and Others*, C-425/19 P, EU:C:2021:154, paragraph 58 and the case-law cited).

33 As regards, in the first place, the condition relating to the imputability to a Member State, clearly the compensation mechanism at issue in the main proceedings was established by legislation and it is therefore imputable to the Member State concerned (see, to that effect, judgments of 19 December 2013, *Association Vent De Colère! and Others*, C-262/12, EU:C:2013:851, paragraph 18, and of 28 March 2019, *Germany* v *Commission*, C-405/16 P, EU:C:2019:268, paragraph 50).

34 As regards, in the second place, the condition that the advantage be granted 'through State resources', which the referring court specifically raises, the Court has held that amounts resulting from the price surcharge imposed by the State on purchasers of electricity are similar to a charge

which is levied on electricity and have their origin in 'State resources' within the meaning of Article 107(1) TFEU (see, to that effect, judgment of 17 July 2008, *Essent Netwerk Noord and Others*, C-206/06, EU:C:2008:413, paragraphs 47 and 66).

35 Funds must thus be regarded as 'State resources' within the meaning of Article 107(1) TFEU if they derive from compulsory contributions imposed by the legislation of the Member State concerned and are managed and apportioned in accordance with that legislation (see, to that effect, judgment of 19 December 2013, *Association Vent De Colère! and Others*, C-262/12, EU:C:2013:851, paragraph 25). It is therefore irrelevant that the financing mechanism at issue does not, strictly speaking, fall within the category of fiscal levies under national law (judgment of 16 September 2021, *FVE Holýšov I and Others* v *Commission*, C-850/19 P, EU:C:2021:740, paragraph 46 and the case-law cited).

36 On the other hand, as the Advocate General observed in point 36 of his Opinion, the fact that the financial burden of the surcharge is borne in practice by a defined category of persons is not sufficient to establish that the funds resulting from that surcharge are in the nature of 'State resources' within the meaning of Article 107(1) TFEU. It is also necessary for that surcharge to be compulsory under national law.

37 Thus, the Court has held that it is not sufficient that the system operators pass on in the electricity sale price to their final customers the additional costs caused by their obligation to purchase electricity generated from renewable energy sources at the statutory rates, where that offsetting is the result only of a practice and not of a legal obligation (see, to that effect, judgment of 28 March 2019, *Germany* v *Commission*, C-405/16 P, EU:C:2019:268, paragraphs 70 and 71).

38 It is apparent from the foregoing that funds financed by a levy or other compulsory surcharges under national legislation and managed and apportioned in accordance with that legislation constitute 'State resources' within the meaning of Article 107(1) TFEU.

39 However, as the Advocate General stated in point 49 of his Opinion, the criterion mentioned in the preceding paragraph of the present judgment is not the only criterion for identifying 'State resources' within the meaning of that provision. The fact that sums constantly remain under public control, and therefore available to the competent national authorities, is sufficient for them to be categorised as 'State resources' (judgments of 16 May 2002, *France* v *Commission*, C-482/99, EU:C:2002:294, paragraph 37, and of 21 October 2020, *Eco TLC*, C-556/19, EU:C:2020:844, paragraph 36).

40 In the present case, it is apparent from the requests for a preliminary ruling that the additional cost represented by the purchase by the approved distribution undertaking of electricity generated from renewable energy sources at a price corresponding to twice the average electricity sale price is financed, under the Latvian legislation concerned, by a compulsory surcharge borne by all end-users in proportion to their consumption.

41 Furthermore, according to the information provided to the Court, in particular by the Latvian Government at the hearing, the funds resulting from that surcharge are collected, managed and apportioned by a company wholly owned by the Member State concerned and cannot be spent for purposes other than those provided for by law, namely offsetting the additional cost mentioned in the preceding paragraph. Those funds thus constantly remain under public control.

42 It follows that, subject to the verifications which it is for the referring court to carry out, the funds by means of which a tariff advantage is granted, pursuant to the Latvian legislation concerned, to producers of electricity from renewable energy sources are 'State resources', within the meaning of Article 107(1) TFEU, in the light of the two alternative criteria of that concept set out in paragraphs 38 and 39 above.

43 In the light of the foregoing considerations, the answer to the first question referred for a preliminary ruling is that Article 107(1) TFEU must be interpreted as meaning that national legislation which obliges the approved electricity distribution undertaking to purchase electricity generated from renewable energy sources at a price higher than the market price and which provides that the resulting additional costs are financed by a compulsory surcharge borne by end consumers or which provides that the funds used to finance those additional costs constantly remain under public control constitutes an intervention 'through State resources' within the meaning of that provision.

The second question

44 By its second question, the referring court asks, in essence, whether Article 107(1) TFEU must be interpreted as meaning that the classification of an advantage as 'State aid', within the meaning of that provision, is subject to the condition that the market concerned has first been fully liberalised and, in that case, what factors make it possible to date the liberalisation of the electricity market in Latvia.

45 According to the Latvian Government, that question must be declared inadmissible, since it is not capable of affecting the outcome of the disputes in the main proceedings. It argues that the sums claimed by the applicants in the main proceedings meet the criteria for State aid irrespective of the date of liberalisation of the electricity market concerned.

46 It must be borne in mind in this connection that it is solely for the national court hearing the case, which must assume responsibility for the subsequent judicial decision, to determine, with regard to the particular aspects of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it refers to the Court. Consequently, where the questions submitted concern the interpretation of a rule of EU law, the Court is in principle bound to give a ruling (judgments of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraph 24, and of 7 February 2018, *American Express*, C-304/16, EU:C:2018:66, paragraph 31).

47 Accordingly, questions concerning EU law enjoy a presumption of relevance. The Court may refuse to give a ruling on a question referred by a national court only where it is quite obvious that the interpretation of a rule of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgments of 16 June 2015, *Gauweiler and Others*, C-62/14, EU:C:2015:400, paragraph 25, and of 7 February 2018, *American Express*, C-304/16, EU:C:2018:66, paragraph 32).

48 In the present case, the second question referred concerns the concept of 'State aid', within the meaning of Article 107 TFEU, and consequently benefits from the presumption of relevance referred to in the preceding paragraph of the present judgment.

49 That presumption of relevance cannot be rebutted in the present case. It is common ground that the disputes in the main proceedings concern the classification as aid of the tariff advantage granted to producers of electricity from renewable energy sources under the relevant Latvian legislation. As the Commission points out in its observations, the non-liberalisation of the electricity market could have an impact on the requirements for that classification, namely that the intervention concerned must be liable to affect trade between Member States and that it must distort or threaten to distort competition, referred to in paragraph 31 of the present judgment.

50 It follows that the plea of inadmissibility raised by the Latvian Government must be rejected.

51 As regards the influence of the liberalisation of the market concerned on the assessment of the existence of aid, it must be borne in mind that State aid is liable to affect trade between Member States and to distort or threaten to distort competition, even though the market concerned is only partially open to competition. In order for an intervention by the State or through State resources to be liable to affect trade between Member States and to distort or threaten to distort competition, it is sufficient that, at the time of the entry into force of an aid measure, there is a situation of effective competition on the relevant market (judgment of 23 January 2019, *Fallimento Traghetti del Mediterraneo*, C-387/17, EU:C:2019:51, paragraphs 39 and 40).

52 It follows that an advantage granted to certain undertakings is liable to affect trade between Member States and distort competition even before the full liberalisation of that market (see, to that effect, judgment of 10 June 2010, *Fallimento Traghetti del Mediterraneo*, C-140/09, EU:C:2010:335, paragraph 49).

53 Accordingly, the date of complete liberalisation of the electricity market in Latvia is irrelevant for the purpose of determining whether the aid provided by the public operator in that Member State by purchasing electricity generated from renewable energy sources at a price higher than the market price must be classified as State aid.

54 In the light of the foregoing considerations, the answer to the second question referred is that Article 107(1) TFEU must be interpreted as meaning that the classification of an advantage as 'State aid' within the meaning of that provision is not subject to the condition that the market concerned has first been fully liberalised.

The third question

55 By its third question, the referring court asks, in essence, whether Article 107(1) TFEU must be interpreted as meaning that, if the advantage granted to producers of electricity generated from renewable energy sources under the relevant Latvian legislation does not constitute 'State aid' within the meaning of Article 107(1) TFEU, payment of the sums claimed by the applicants in the main proceedings could, on the other hand, constitute the payment of 'aid' within the meaning of that provision.

56 As a preliminary point, it must be recalled that, in proceedings under Article 267 TFEU, the Court has no jurisdiction to give a ruling on the facts of the dispute in the main proceedings or to apply the EU law rules which it has interpreted to national measures or situations, since those questions are matters for the exclusive jurisdiction of the national court (judgment of 10 June 2010, *Fallimento Traghetti del Mediterraneo*, C-140/09, EU:C:2010:335, paragraph 22 and the case-law cited).

57 It follows that, in the present case, the Court does not have jurisdiction, in particular, to determine whether the sums at issue in the main proceedings constitute State aid.

58 By contrast, the Court does have jurisdiction to give the national court full guidance on the interpretation of EU law in order to enable it to determine the issue of compatibility of a national measure with that law for the purposes of ruling on the case before it. In the area of State aid, the Court has jurisdiction, inter alia, to give the national court guidance on interpretation in order to enable it to determine whether a national measure may be classified as 'State aid' under EU law (judgment of 10 June 2010, *Fallimento Traghetti del Mediterraneo*, C-140/09, EU:C:2010:335, paragraph 24 and the case-law cited).

59 In that regard, it should be borne in mind that State aid, which constitutes measures of the public authority favouring certain undertakings or certain products, is fundamentally different in its legal nature from the damages which the national authorities may be ordered to pay to individuals in compensation for the harm they have caused to those individuals. Thus, damages do not constitute State aid within the meaning of EU law (see, to that effect, judgment of 27 September 1988, *Asteris and Others*, 106/87 to 120/87, EU:C:1988:457, paragraphs 23 and 24).

60 On the other hand, as the Advocate General observed in points 69 and 70 of his Opinion, it is irrelevant, for the purpose of determining whether sums correspond to 'State aid', whether actions seeking payment of those sums are classified as 'claims for compensation' or as 'claims for damages' under national law.

61 In the present case, it is apparent from the information provided by the referring court that the actions brought by the applicants in the main proceedings against the regulatory authority before the Latvian administrative judicature seek payment of sums which they consider to be due to them under Article 40(1) of the Law on Energy, entitlement to which they consider themselves to have retained after 2005, pursuant to Article 30(1) of the Law on the electricity market. By decision of 20 January 2010, the Latvijas Republikas Satversmes tiesa (Constitutional Court) found that, as a result of an error of interpretation of Article 30(1), the regulatory authority had wrongly failed to update the purchase price for electricity generated from renewable energy sources from 8 June 2005.

62 On the other hand, it is not apparent from the explanations provided by the referring court that the sums at issue in the main proceedings are in the nature of 'damages' within the meaning of the case-law referred to in paragraph 59 above. The applicants in the main proceedings do not seek compensation for harm distinct from that consisting of the complete non-payment of the advantage to which they consider they were entitled under the Latvian legislation concerned between 2006 and 2008. The position, by contrast, would have been different if the actions in the main proceedings had sought compensation for harm resulting from that non-payment.

63 It follows that the sums at issue in the main proceedings are of the same kind as those already obtained between 2006 and 2008 by the applicants in the main proceedings pursuant to that legislation, and in respect of which they merely seek rectification of the amount.

64 In those circumstances, the classification of sums such as those claimed by the applicants in the main proceedings on the basis of the relevant Latvian legislation as 'State aid' depends on whether the advantage granted to producers of electricity generated from renewable energy sources under that legislation itself constitutes State aid.

65 In the light of all the foregoing considerations, the answer to the third question is that Article 107(1) TFEU must be interpreted as meaning that where national legislation has established 'State aid' within the meaning of that provision, the payment of a sum claimed before the courts in accordance with that legislation also constitutes such aid.

The fourth question

66 By its fourth question, the referring court asks, in essence, whether Article 107(1) TFEU must be interpreted as meaning that, if the tariff advantage granted to undertakings generating electricity from renewable energy sources constitutes 'State aid' within the meaning of that provision, the claims of the applicants in the main proceedings should be regarded as requests for payment of the portion of that State aid not received or as requests for the grant by the court hearing the case of separate State aid.

67 In that regard, it follows from paragraphs 61 to 63 of the present judgment that the applicants in the main proceedings seek payment of a portion of the tariff advantage granted to producers of electricity from renewable energy sources which they consider to be due to them under the Latvian legislation in force between 2006 and 2008.

68 Consequently, if that tariff advantage constitutes 'State aid' within the meaning of Article 107(1) TFEU, the claims of the applicants in the main proceedings correspond to a request for payment of a portion of that State aid.

69 However, according to the Commission, the sums granted by the national court to the applicants in the main proceedings constitute State aid distinct from the tariff advantage established by the Latvian legislation concerned.

70 In support of its argument, the Commission submits, first of all, that the legal basis for the 'State aid' granted to the applicants in the main proceedings in the judgments of the Administratīvā apgabaltiesa (Regional Administrative Court) is not the Law on Energy but the judgments of that court themselves.

71 However, it should be noted that, in those judgments, that court granted the sums claimed by the applicants in the main proceedings by expressly applying the Law on the electricity market as interpreted by the Latvijas Republikas Satversmes tiesa (Constitutional Court).

72 Next, relying on paragraph 17 of the judgment of 8 December 2011, *France Télécom* v *Commission* (C-81/10 P, EU:C:2011:811), the Commission considers, generally, that, from the point of view of EU law, it is irrelevant whether State aid is granted by a court or by another authority, in particular administrative authorities. It argues that State aid measures are objectively defined by their effects and not by their causes or objectives. If State aid could not be granted by a national court, the concept of 'State aid' would not be defined 'objectively', depending on the effects of the measure concerned, but 'subjectively', according to the public authority which adopted it.

73 However, the case-law cited in the previous paragraph of the present judgment, according to which 'State aid', under Article 107(1) TFEU, is characterised by its effects and not by its objectives, does not mean that State aid is exhaustively defined by its effects, to the exclusion of all other criteria. State aid is also defined by its nature, if only because it is granted 'through State resources', as Article 107(1) TFEU expressly provides. Consequently, the case-law cited by the

Commission does not have the scope which the Commission ascribes to it. In particular, no conclusion can be drawn from that case-law concerning the possibility of a national court granting State aid.

74 Lastly, the Commission relies on the judgment of 4 March 2020, *Buonotourist* v *Commission* (C-586/18 P, EU:C:2020:152), in which the Court held that the Italian Republic had, by a judgment of the Consiglio di Stato (Council of State, Italy), granted a bus transport service provider State aid consisting of compensation for its public service obligations.

75 However, it should be noted that, in that judgment, the Court merely stated, as is apparent from paragraph 97 thereof, that the aid measure at issue 'had been the subject of a decision of the Consiglio di Stato (Council of State)'. Although the national court may, where appropriate, deliver a judgment from which it follows that one of the parties must, in accordance with national law, receive a sum corresponding to State aid, that does not mean that, in that case, it itself grants that aid. Such a judgment has the sole effect, by virtue of the principle of *res judicata*, of requiring the other party, generally the competent administrative authority, to pay that aid. Thus, in the case which gave rise to the judgment of 4 March 2020, *Buonotourist* v *Commission* (C-586/18 P, EU:C:2020:152), the compensation for public service obligations had been provided for by a decision of the Italian authorities, as is apparent from paragraph 17 of that judgment.

76 In any event, the establishment as such of State aid cannot result from a judicial decision. The establishment of State aid entails a decision as to the appropriate course of action which falls outside the scope of a court's powers and obligations.

77 It must be added that the application of the EU rules on State aid is based on an obligation of sincere cooperation between the national courts, on the one hand, and the Commission and the Courts of the European Union, on the other, in the context of which each acts on the basis of the role assigned to it by the FEU Treaty. In the context of that cooperation, national courts must take all the necessary measures, whether general or specific, to ensure fulfilment of the obligations under EU law and refrain from taking those which may jeopardise the attainment of the objectives of the Treaty, as follows from Article 4(3) TEU (judgment of 21 November 2013, *Deutsche Lufthansa*, C-284/12, EU:C:2013:755, paragraph 41).

78 Consequently, if the national legislation concerned is deemed to establish an advantage constituting State aid in favour of producers of electricity from renewable energy sources, the sums allocated to the applicants in the main proceedings in the cases which gave rise to the judgments of the Administratīvā apgabaltiesa (Regional Administrative Court) cannot in any event be regarded as constituting State aid distinct from that advantage.

79 The answer to the fourth question is therefore that Article 107(1) TFEU must be interpreted as meaning that, where national legislation establishing a statutory right to a higher payment for electricity generated from renewable energy sources constitutes 'State aid', within the meaning of that provision, legal proceedings seeking full entitlement to that right must be regarded as requests for payment of the portion of that State aid not received, and not as requests for the grant by the court seised of a separate State aid.

The fifth question

80 By its fifth question, the referring court asks, in essence, whether Article 107(1) TFEU must be interpreted as meaning that, if the claims at issue in the main proceedings were to be regarded as requests for payment of the portion of State aid not received, that payment would have to take account of the situation on the electricity market and the state of the legislation in force on the date on which that payment is made, including the existing restrictions on overcompensation.

81 In accordance with settled case-law, the question referred for a preliminary ruling to the Court must involve an interpretation of EU law which meets an objective need of the decision that the national court must take (see, to that effect, order of the President of the Court of 7 September 2016, *Velikova*, C-228/15, not published, EU:C:2016:641, paragraph 35 and the case-law cited).

82 It should be noted that the circumstances referred to in the fifth question referred for a preliminary ruling relate, in essence, to the assessment of the compatibility of the measures at issue in the main proceedings with the internal market, were those measures to be classified as State aid. According to settled case-law, the assessment of the compatibility of aid measures or of an aid scheme with the internal market falls within the exclusive competence of the Commission, subject to review by the Courts of the European Union (judgments of 23 March 2006, *Enirisorse*, C-237/04, EU:C:2006:197, paragraph 23, and of 27 January 2022, *Fondul Proprietatea*, C-179/20, EU:C:2022:58, paragraph 83 and the case-law cited). Consequently, that question is manifestly irrelevant to the outcome of the disputes in the main proceedings.

83 It follows from the foregoing that the fifth question is inadmissible.

The sixth and seventh questions

84 By its sixth and seventh questions, which it is appropriate to examine together, the referring court asks, in essence, whether, first, the fact that wind power plants, unlike hydroelectric power plants, have benefited in the past from a full amount of aid and whether, second, the fact that only some of the producers of hydroelectricity receive compensation are relevant to the interpretation of Article 107(1) TFEU.

85 It must be recalled that the need to arrive at an interpretation of EU law which will be of use to the referring court requires that court to define the factual and legislative context of the questions it is asking, or at the very least to explain the factual circumstances on which those questions are based. In the procedure established by Article 267 TFEU, the Court is empowered to give rulings on the interpretation of EU legislation only on the basis of the facts which the national court puts before it (judgment of 26 October 2017, *Balgarska energiyna borsa*, C-347/16, EU:C:2017:816, paragraph 56 and the case-law cited).

86 According to the Court's case-law, that requirement to give details is of particular importance in the field of competition, which is characterised by complex factual and legal situations (judgment of 26 October 2017, *Balgarska energiyna borsa*, C-347/16, EU:C:2017:816, paragraph 57 and the case-law cited).

87 It must be emphasised that the information provided in orders for reference serves not only to enable the Court to give useful answers but also to ensure that the governments of the Member States and other interested parties have a proper opportunity to submit observations in

accordance with Article 23 of the Statute of the Court of Justice of the European Union. The requirements concerning the content of a request for a preliminary ruling are expressly set out in Article 94 of the Court's Rules of Procedure, of which the national court should, in the context of the cooperation instituted by Article 267 TFEU, be aware and which it is bound to observe scrupulously (judgment of 26 October 2017, *Balgarska energiyna borsa*, C-347/16, EU:C:2017:816, paragraphs 58 and 59 and the case-law cited).

88 In the present case, it must be noted that the order for reference, which, in essence, merely refers to the circumstances referred to in paragraph 84 above, does not contain any explanation as to why the referring court asks the Court about the relevance of those circumstances in the context of the interpretation of Article 107(1) TFEU.

89 In those circumstances, the sixth and seventh questions must be declared inadmissible.

The eighth question

90 By its eighth question, the referring court asks, in essence, whether Regulation No 1407/2013, in particular Article 5(2) thereof, must be interpreted as meaning that the criteria laid down for *de minimis* aid are applicable to the aid at issue in the main proceedings, in so far as the amount of that aid does not exceed the *de minimis* threshold laid down in Article 3(2) of that regulation.

91 Although, as recalled in paragraph 82 above, national courts do not have jurisdiction to rule on the compatibility of State aid with the internal market, proceedings may, on the other hand, be commenced before them requiring them to interpret and apply the concept of 'aid' within the meaning of Article 107(1) TFEU, in particular in order to determine whether a State measure introduced without observance of the preliminary examination procedure provided for in Article 108(3) TFEU ought to have been subject to that procedure (judgments of 18 July 2007, *Lucchini*, C-119/05, EU:C:2007:434, paragraph 50, and of 26 October 2016, *DEI and Commission* v *Alouminion tis Ellados*, C-590/14 P, EU:C:2016:797, paragraph 98). Thus, a national court may be required to assess whether a State aid falls within the derogation scheme for *de minimis* aid, which is not subject to the notification requirement laid down in Article 108(3) TFEU.

92 In the present case, the referring court raises the question of the applicability of Regulation No 1407/2013 in the disputes in the main proceedings on account of the modest amount of the sums paid to the applicants in the main proceedings by the court adjudicating on the substance, namely the sums of EUR 3 406.63 and EUR 662.26 respectively. However, under Article 5(2) of that regulation, the *de minimis* ceiling must be assessed in the light of aid already granted 'in relation to the same eligible costs' or under 'the same risk finance measure'. As stated in paragraphs 63 and 67 of this judgment, the sums allocated to the applicants in the main proceedings correspond to a rectification of the total amount of the sums already received and still claimed by them between 2006 and 2008 pursuant to Article 30(1) of the Law on the electricity market. Consequently, it is in the light of the total amount of the sums already received and the sums still claimed by the applicants in the main proceedings on that basis during the reference period that, assuming those amounts constitute State aid, the *de minimis* nature of the aid at issue in the main proceedings must be assessed.

93 The answer to the eighth question referred for a preliminary ruling is therefore that Regulation No 1407/2013, in particular Article 5(2) thereof, must be interpreted as meaning that compliance with the *de minimis* threshold laid down in Article 3(2) of that regulation must be assessed in the light of the amount of aid claimed under the relevant national legislation cumulated with the amount of the payments already received during the reference period under that legislation.

The ninth and tenth questions

94 By its ninth and tenth questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 1(b) and (c) of Regulation 2015/1589 must be interpreted as meaning that, if the sums claimed by the applicants in the main proceedings correspond to State aid, that aid must be classified as 'new aid' or as 'existing aid' within the meaning of that provision. The referring court seeks, in particular, to ascertain whether those sums could be regarded as 'existing aid', pursuant to Article 1(b)(iv) of Regulation 2015/1589.

95 As stated in paragraphs 62 and 63 above, the sums claimed by the applicants in the main proceedings represent a portion of the tariff advantage which they consider to be payable to them in their capacity as producers of electricity from renewable energy sources, under the Latvian legislation in force between 2006 and 2008. Those sums are therefore of the same nature as that tariff advantage.

96 Accordingly, the question whether the sums at issue in the main proceedings must be classified as 'new aid' or 'existing aid' depends on which of those two classifications must be given to that tariff advantage, to which those sums are attributable, were that advantage to be classified as 'State aid'.

97 Since this is a question concerning the legal classification of the facts of the dispute in the main proceedings falling within the exclusive jurisdiction of the referring court, it should be recalled that it is for the Court of Justice merely to provide that court with guidance on the interpretation of provisions of EU law, which it is for the latter to apply.

98 Article 1(c) of Regulation 2015/1589 provides that 'new aid' means 'all aid, that is to say, aid schemes and individual aid, which is not existing aid, including alterations to existing aid'. Thus, in order for State aid to be regarded as 'new aid', it must be established that it is not 'existing aid' within the meaning of Article 1(b) of Regulation 2015/1589, which distinguishes several categories of existing aid.

99 In the first place, Article 1(b)(i) of Regulation 2015/1589 designates as 'existing aid' 'aid schemes and individual aid which were put into effect before, and are still applicable after, the entry into force of the [FEU Treaty] in the respective Member States'.

100 In that regard, it should be recalled that the tariff advantage for hydroelectricity producers established in Article 40(1) of the Law on Energy prior to the accession of the Republic of Latvia to the European Union was extended by Article 30(1) of the Law on the electricity market.

101 However, as is apparent from the wording of Article 1(b)(i) of Regulation 2015/1589, that provision is applicable 'without prejudice to … the Appendix of Annex IV to the Act of Accession'. It is apparent from the second subparagraph of point 3(1) of Annex IV that all measures still applicable after the date of accession which constitute State aid are to be considered as new aid unless they were put into effect before 10 December 1994, they are listed

in the appendix to Annex IV or they were notified to the Commission without the Commission having raised objections on the ground of serious doubts as to the compatibility of the measures with the internal market.

102 In the present case, the relevant national legislation is not referred to in the appendix to Annex IV to the Act of Accession and it is not apparent from the request for a preliminary ruling that it was implemented before 10 December 1994 or that it was notified to the Commission as an aid scheme.

103 In those circumstances, the tariff advantage established by the Law on Energy and extended by the Law on the electricity market cannot, if it constitutes State aid, be classified as 'existing aid' within the meaning of Article 1(b)(i) of Regulation 2015/1589, which it is, however, for the referring court to verify.

104 In the second place, Article 1(b)(ii) and (iii) of Regulation 2015/1589 designates as 'existing aid' 'authorised aid, that is to say, aid schemes and individual aid which have been authorised by the Commission or by the Council' or 'deemed to have been authorised' by the Commission. It is apparent from the request for a preliminary ruling that the tariff advantage at issue in the main proceedings was authorised neither by the Council nor by the Commission and nor can it be deemed to have been authorised by the latter, since it was not notified to it. Therefore, were that advantage to be classified as State aid, it cannot be regarded as 'existing aid' within the meaning of Article 1(b)(ii) and (iii) of Regulation 2015/1589, which it is, however, for the referring court to verify.

105 In the third place, under Article 1(b)(iv) of Regulation 2015/1589, 'existing aid' is also 'aid which is deemed to be existing aid pursuant to Article 17 of [Regulation 2015/1589]'.

106 Article 17(1) of Regulation 2015/1589 provides that the powers of the Commission to recover unlawful aid are subject to a limitation period of 10 years. By virtue of paragraph 2 of that article, the limitation period begins on the day on which the unlawful aid is awarded to the beneficiary, either as individual aid or as aid under an aid scheme, and any action taken by the Commission or by a Member State, acting at the request of the Commission, with regard to the unlawful aid interrupts the limitation period. Furthermore, under paragraph 3 of that article, any aid with regard to which that limitation period has expired is to be deemed to be existing aid (judgment of 26 April 2018, *ANGED*, C-233/16, EU:C:2018:280, paragraph 79).

107 In order to determine whether the sums claimed by the applicants in the main proceedings may be classified as 'existing aid', within the meaning of Article 1(b)(iv) of Regulation 2015/1589, the referring court asks the Court, in its tenth question, whether the point at which the limitation period laid down in Article 17(1) of Regulation 2015/1589 starts to run should be fixed at the date on which the tariff advantage claimed by the applicants in the main proceedings was established or on the date of actual payment made under it in their favour.

108 In this connection, it is apparent from Article 17(2) of that regulation that, in order to determine the date on which the 10-year limitation period starts to run, that provision refers to the date on which the aid was granted to the beneficiary and not to the date on which an aid scheme was adopted (see, to that effect, judgment of 8 December 2011, *France Télécom* v *Commission*, C-81/10 P, EU:C:2011:811, paragraph 81).

109 Furthermore, for the purposes of calculating that limitation period, the aid concerned must be regarded as not having been awarded to the beneficiary until the date on which it was in fact received by the beneficiary (judgment of 8 December 2011, *France Télécom* v *Commission*, C-81/10 P, EU:C:2011:811, paragraph 82).

110 The purpose of Article 17 of Regulation 2015/1589 is to determine the period within which the Commission may recover unlawfully paid aid. Consequently, the point from when that period starts to run cannot be fixed as a date prior to the date on which the unlawful aid was paid.

111 In the present case, as stated in paragraph 67 of the present judgment, the sums claimed by the applicants in the main proceedings correspond to the portion of the tariff advantage which they consider to be due to them under the Latvian legislation in force between 2006 and 2008 and which was not paid to them at the same time as the remainder of that advantage. As long as those sums have not actually been paid, it follows from the preceding paragraph that the limitation period laid down in Article 17 of Regulation 2015/1589 has not started to run with regard to them. It is true that the Administratīvā apgabaltiesa (Regional Administrative Court) granted the applications of the applicants in the main proceedings in the amount of EUR 3 406.63 and EUR 662.26 respectively. However, as the Advocate General observed in point 87 of his Opinion, the judgments of that court provided for their execution to be suspended pending notification of the aid concerned and the subsequent decision of the Commission concerning that aid. Accordingly, the actual grant of the aid, that is to say, the payment of the sums granted, has not yet taken place and the limitation period provided for in Article 17(1) of Regulation 2015/1589 has therefore neither started to run nor, a fortiori, expired.

112 Consequently, the conditions laid down in Article 1(b)(iv) of Regulation 2015/1589 have not been met, so that the sums at issue in the main proceedings, if they were to be classified as aid measures, could not be regarded as 'existing aid' within the meaning of that provision.

113 In the fourth place, 'existing aid' within the meaning of Article 1(b)(v) of Regulation 2015/1589 is also aid which is deemed to be such 'because it can be established that at the time it was put into effect it did not constitute an aid, and subsequently became an aid due to the evolution of the internal market and without having been altered by the Member State'. That provision states that 'where certain measures become aid following the liberalisation of an activity by Union law, such measures shall not be considered as existing aid after the date fixed for liberalisation'.

114 It should be noted that the request for a preliminary ruling does not mention the possibility that the mechanism introduced to promote electricity generated from renewable energy sources has become aid as a result of the evolution of the internal market. Moreover, as is apparent from paragraph 54 above, classification as 'State aid' does not require the electricity market to have been fully liberalised beforehand.

115 It must therefore be held that the sums claimed by the applicants in the main proceedings, if they were to be classified as State aid, would not constitute 'existing aid' within the meaning of Article 1(b)(v) of Regulation 2015/1589 either.

116 In the light of the foregoing considerations, the answer to the ninth and tenth questions referred is that Article 1(b) and (c) of Regulation 2015/1589 must be interpreted as meaning that, where State aid does not correspond to any of the categories of existing aid provided for in Article 1(b) of that regulation, that aid, including the portion thereof whose payment is claimed subsequently, must be classified as 'new aid' within the meaning of Article 1(c) of that regulation.

The eleventh question

117 By its eleventh question, the referring court asks, in essence, whether Article 108(3) TFEU and Article 2(1) and Article 3 of Regulation 2015/1589 must be interpreted as meaning that a national court may grant an application for payment of a sum corresponding to new aid which has not been notified to the Commission, provided that that aid is first duly notified by the national authorities concerned to the Commission and that the Commission gives, or is deemed to have given, its consent in that regard.

118 That question is intended to enable the referring court to assess the compatibility of the judgments of the Administratīvā apgabaltiesa (Regional Administrative Court), currently under appeal, with the provisions of EU law mentioned in the previous paragraph. As stated in paragraph 28 above, by those judgments, that court upheld in part the claims of DOBELES HES and GM and ordered the regulatory authority to pay them the sums of EUR 3 406.63 and EUR 662.26 respectively, provided that the Commission took, or was deemed to have taken, a decision authorising that aid.

119 It is apparent from the Court's case-law that the role assigned by EU law to the national courts in the implementation of the State aid control system includes inter alia the obligation, if those courts find that the measure concerned should have been notified to the Commission, to verify whether the Member State concerned complied with that obligation and, if that is not the case, to declare that measure unlawful (see, to that effect, judgment of 19 March 2015, *OTP Bank*, C-672/13, EU:C:2015:185, paragraph 68).

120 It is for the national courts to draw all the necessary conclusions from the infringement of Article 108(3) TFEU, in accordance with their national law (see, to that effect, judgment of 19 March 2015, *OTP Bank*, C-672/13, EU:C:2015:185, paragraph 69).

121 Where the national court is seised of a request seeking the payment of aid which is unlawful, since it was not notified to the Commission, the task of reviewing State aid which EU law confers on those courts must therefore, in principle, lead the national court to reject that request.

122 Nevertheless, a decision of the national court ordering the defendant to pay the aid in question subject to the condition that that aid must first be notified to the Commission by the national authorities concerned and that that institution gives its consent, or is deemed to have given it, is also likely to prevent new aid from being paid in breach of Article 108(3) TFEU and Article 2(1) and Article 3 of Regulation 2015/1589.

123 Article 108(3) TFEU and Article 2(1) and Article 3 of Regulation 2015/1589 must therefore be interpreted as meaning that a national court may grant a request for payment of a sum corresponding to new aid which has not been notified to the Commission, provided that that aid is first duly notified by the national authorities concerned to that institution and that the latter gives, or is deemed to have given, its consent in that regard.

The twelfth question

124 By its twelfth question, the referring court asks, in essence, whether Article 107(1) TFEU must be interpreted as meaning that it is relevant, for the purpose of determining whether sums are in the nature of 'State aid' within the meaning of that provision, whether they are claimed from a public authority distinct from that which is, in principle, required to pay them pursuant to the national legislation concerned and whose budget is intended solely to ensure its own operation.

125 It follows from Article 107(1) TFEU that the existence of State aid depends, not on the body responsible for its payment under national law, but on the State origin of the funds from which the aid concerned is drawn. It is, in particular, irrelevant in that regard whether the person entrusted with granting the advantage in question has public or private status or enjoys statutory autonomy under national law (see, to that effect, judgment of 9 November 2017, *Commission* v *TV2/Danmark*, C-656/15 P, EU:C:2017:836, paragraphs 44 and 45).

126 Thus, the fact that a portion of an advantage, which was not paid by the body in principle responsible for doing so in accordance with national law, is claimed from a separate public authority in legal proceedings, cannot affect the classification of that advantage as State aid.

127 Consequently, the answer to the twelfth question is that Article 107(1) TFEU must be interpreted as meaning that it is irrelevant, for the purpose of determining whether sums are in the nature of 'State aid' within the meaning of that provision, whether those sums are claimed from a public authority distinct from that which is, in principle, required to pay them pursuant to the national legislation concerned and whose budget is intended solely to ensure its own operation.

The thirteenth question

128 By its thirteenth question, the referring court asks, in essence, whether Directive 2002/20 may preclude the 'any award of compensation' to the applicants in the main proceedings by the regulatory authority.

129 As observed by the Advocate General in point 100 of his Opinion, that directive, which concerns the electronic communications market, is not applicable to the electricity sector.

130 It follows that the thirteenth question is manifestly irrelevant to the outcome of the disputes in the main proceedings and therefore, according to the case-law cited in paragraph 47 above, inadmissible.

Costs

131 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. **Article 107(1) TFEU must be interpreted as meaning that national legislation which obliges the approved electricity distribution undertaking to purchase electricity generated from renewable energy sources at a price higher than the market price and which provides that the resulting additional costs are financed by a compulsory surcharge borne by end consumers or which provides that the funds used to finance those additional costs constantly remain under public control constitutes an intervention 'through State resources' within the meaning of that provision.**

2. **Article 107(1) TFEU must be interpreted as meaning that the classification of an advantage as 'State aid' within the meaning of that provision is not subject to the condition that the market concerned has first been fully liberalised.**

3. **Article 107(1) TFEU must be interpreted as meaning that, where national legislation has established 'State aid', within the meaning of that provision, the payment of a sum claimed before the courts in accordance with that legislation also constitutes such aid.**

4. **Article 107(1) TFEU must be interpreted as meaning that, where national legislation establishing a statutory right to a higher payment for electricity generated from renewable energy sources constitutes 'State aid', within the meaning of that provision, legal proceedings seeking full entitlement to that right must be regarded as requests for payment of the portion of that State aid not received, and not as requests for the grant by the court seised of a separate State aid.**

5. **Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 [TFEU] to *de minimis* aid, in particular Article 5(2) thereof, must be interpreted as meaning that compliance with the *de minimis* threshold laid down in Article 3(2) of that regulation must be assessed in the light of the amount of aid claimed under the relevant national legislation cumulated with the amount of the payments already received during the reference period under that legislation.**

6. **Article 1(b) and (c) of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 [TFEU] must be interpreted as meaning that, where State aid does not correspond to any of the categories of existing aid provided for in Article 1(b) of that regulation, that aid, including the portion thereof whose payment is subsequently claimed, must be classified as 'new aid' within the meaning of Article 1(c) of that regulation.**

7. **Article 108(3) TFEU and Article 2(1) and Article 3 of Regulation 2015/1589 must be interpreted as meaning that a national court may grant a request for payment of a sum corresponding to new aid which has not been notified to the European Commission, provided that that aid is first duly notified by the national authorities concerned to that institution and that the latter gives, or is deemed to have given, its consent in that regard.**

8. **Article 107(1) TFEU must be interpreted as meaning that it is irrelevant, for the purpose of determining whether sums are in the nature of 'State aid' within the meaning of that provision, whether those sums are claimed from a public authority distinct from that which is, in principle, required to pay them pursuant to the national legislation concerned and whose budget is intended solely to ensure its own operation.**

[Signatures]