

European Court of Justice confirmed Hinkley Point C State Aid Decision on September 22, 2020

Chronology

- 2014 European Commission (EC) approved UK plans to use taxpayer money to support the GBP20bn (\$25m) project to build two EPR reactor units at Hinkley Point C¹.
- Austria in 2015 challenged this decision arguing that it violated several state aid rules. It objected to a guaranteed price for electricity from the plant, which is higher than market rates, and also opposed state credit guarantees being provided for the project. Subsidies are there to support modern technologies that lie in the general interest of all EU member states. This is not the case with nuclear power.
- 2018 Austria lost this case but brought an appeal against the court's decision before the European Court of Justice. Basically the EURATOM treaty was understood as the EU common goal of supporting nuclear energy.
- Sept 22, 2020: CJEU confirmed the 2014 decision and dismissed the Austrian appeal of 2018

The court's argumentation is largely based on the EURATOM treaty, seeing it as *lex specialis* even precluding the Lisbon Treaty. While nuclear power is clearly the same product as the electricity generated and traded in the liberalized energy market, the court confirmed the interpretation that nuclear power is an economic sector in line with Art 107 (3) (C) TFEU, an absurd argument Austria attacked in its appeal.

Legal experts reacted to the CJEU interpretation by wondering which EU laws are applicable to the EU state aid and which are not, e.g. environmental protection, precautionary principle obviously not².

The HPC state aid case however is clear prove that nuclear power is far from competitive and can only be financed with enormous state aid = tax payer's money. More of nuclear state aid is already in the pipeline for Paks 2 in Hungary and Dukovany 5 in the Czech Republic. Only enormous state aid makes those disastrous projects possible: The PWR EPR which is planned for HPC (2x1650 MWe) are already under construction in Finland and France with exploding costs and eroded construction times. In Finland the so-called "turn-key" project at the Olkiluoto site was to cost 2.3 billion euros, signed in 2003. Meanwhile the reactor is three times over budget and 12 years behind schedule.

¹ <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32015D0658>

² Julian Nowag at the Oxford Centre for Competition Law and Policy: <https://europeanlawblog.eu/2020/07/23/hinkley-point-c-is-semi-permeable-membrane-protecting-the-internal-markets-nucleus/>

Brexit is clearly a chance to push ahead with the long overdue reform of the EURATOM Treaty. The reform can start with convening a EURATOM Treaty reform conference on government level. With UK leaving the EU, 13 EU member states with nuclear power programmes and 14 without are the new state of play. The upcoming *Conference on the Future of Europe* also gives EU citizens and NGOs the chance to demand an end to this absurd situation of two EU Treaties – one for everything and one for nuclear.

Patricia Lorenz, September 23, 2020

In the Joint Project, European NGOs and research institutions cooperate since 2003 on safe and sustainable energy issues with a focus on anti-nuclear activities in Central and Eastern Europe. For more information see www.joint-project.org/.

