Commission raises no objections to German feed-in laws for electricity from renewable energy sources and combined heat and power

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On 22 May 2002 the Commission decided that the German laws on the promotion of electricity from renewable energy sources and from combined heat and power (CHP) do not constitute State aid in the meaning of Article 87 of the EC Treaty.

Description of the measures

In order to promote sustainable energy supply, Germany introduced two laws to support electricity from renewable energy sources and from combined heat and power (CHP) production. The two laws — the 'Erneuerbare-Energien-Gesetz (EEG)' ([1]), in force since April 2000, and the 'Kraft-Wärme-Kopplungs-Gesetz (KWKG)' ([2]), from May 2000 — oblige net operators to connect 'green' power generation installations to the grid, to purchase their electricity as a priority and to pay for the electricity at a minimum price above the market price for electricity. Thus, these laws clearly give an economic advantage to specific undertakings, namely the operators of 'green' electricity installations and have the potential to distort competition in a liberalised electricity market.

Assessment

The Commission decisions clarify that the two laws do not fall under European State aid rules as they do not fulfil the definition of State aid in the meaning of Article 87(1) of the EC Treaty. This is because the Treaty establishes that such an advantage constitutes State aid only if granted 'by the Member State or through State resources'. In March 2001, the European Court of Justice had ruled on a similar purchase obligation that it did not imply State resources, insofar as any transfers under examination occurred directly between private companies without State involvement ([3]). This ruling on the German 'Stromeinspeisungsgesetz', which preceded the EEG, was decisive also for the present Commission decisions.

The Commission noted that the measures in question apply without distinction to private and public net operators and suppliers. However, the Commission considered that in the current cases, the Court's conclusions could be extended to all companies subject to the purchase and compensation obligation, irrespective of their ownership structure. This seemed justified as the laws treat the public and private companies in exactly the same way, and as there is no indication that State resources are transferred via the public companies to the beneficiaries. This indicates that the measures are not aiming to use specifically the resources of public undertakings in order to support electricity from renewable sources and CHP-electricity. This view was supported by the fact that the electricity transmission network is currently almost entirely owned by private operators.

The Commission had received numerous comments on the economic and ecological effects of the laws. In particular, the question of EEG's potential to overcompensate beneficiaries was raised, especially windpower generation. As the laws do not constitute State aid, they therefore are within the jurisdiction of Germany as regards competition law and it is not the Commission's competence to take position on this question.

([1]) Gesetz über den Vorrang Erneuerbarer Energien (Eneuerbare-Energien-Gesetz – EEG) vom 29. März 2000 (BGBl. I S. 305).
([2]) Gesetz zum Schutz der Stromerzeugung aus Kraft-Wärme-Kopplung (Kraft-Wärme-Kopplungsgesetz — KWKG) vom 12. Mai 2000 (BGBl. I S 703).
([3]) Judgement of the European Court of Justice of 13.3.2001 in Case C-379/98 *PreussenElektra AG vs. Schleswag AG*, [2001] ECR I-2159.