

Dóra Lovas

MTA-DE Public Service Research Group, Hungary

University of Debrecen, Hungary

ORCID: 0000-0002-0002-0832

lovas.dora@law.unideb.hu

## Relevance of the Court Decision on the Hinkley Point Nuclear Power Plant in Relation to Paks II\*

*Znaczenie orzeczenia w sprawie elektrowni jądrowej Hinkley Point w porównaniu z Paks II*

### ABSTRACT

The aim of the article is to present the ruling of the Court of Justice of the European Union (CJEU) in the case of the Hinkley Point C nuclear power plant. This investment can also be related to the Paks II nuclear power plant investment, therefore the two investments are compared too. Both projects were examined by the European Commission, which take an important part when the national aid was awarded to Hinkley Point C and Paks II projects, and the decision of the CJEU also had influence on it. The author considers the European Commission's aid conception positive, because the less developed countries are not forced to use only the renewables, but the environmental and security aspects of nuclear energy are also allowed (e.g. Hinkley Point C and Paks II nuclear power plants). The subsidy was allowed in both cases, but the reasons are different. In these cases, the limits of the EU energy politics can be seen, i.e. the right to select the package and the priority of the energy security and sustainable development. To mention an example for the difference, in Great Britain the energy sector was divided among the participants on the market but in Hungary the nuclear energy remained under state control. In the first option the state wanted to prove that it grants offset for the help to the general market services and in the second option the market investor principle was highlighted in order to show no other market participant act in other way. These points were not accepted, the state aid was provided both cases with permissible reasons because the projects condescend the goals of environmental policy and energy security. The decisions show

---

CORRESPONDENCE ADDRESS: Dóra Lovas, PhD, Assistant Lecturer, University of Debrecen, Faculty of Law, H-4032 Debrecen, Nagyerdei krt. 94, Hungary.

\* Project no. 134499 entitled: "Increasing government intervention in market regulation" has been implemented with the support provided from the National Research, Development and Innovation Fund of Hungary, financed under the K\_20 "OTKA" funding scheme.

that as a result of the efforts to protect the environment the dependency on energy increased and it cannot be solved only by encouraging the usage of the renewables. The permissive attitude of the European Commission can be found here and it is influenced by the increased state regulative roles. According to the author, it also appears in the environmentally friendly decisions which refers to the Paris Agreement's fulfilment and the involvement of environmental requirements into politics. Moreover, the European Union tries to maintain its leader role in economics, which can be reached by the decrease of energy dependency and the exclusive usage of renewable energies is not the appropriate solution. The CJEU judgement is relevant in several respects. The article focuses primarily on the issue of environmental protection, state aid and the relation between the Euratom Treaty and the Treaty on the Functioning of the European Union.

**Keywords:** CJEU; European Commission; ruling; nuclear power plant; control; the EU energy politics; sustainable development; state

## INTRODUCTION

In the case of the Hungarian Paks II nuclear power plant (similarly to the case of the English Hinkley Point C nuclear power plant), there was a chance that State aid prohibition, as laid down in Article 107(1) of the Treaty on the Functioning of the European Union,<sup>1</sup> would materialize. Hungary notified the European Commission (hereinafter: European Commission or Commission) in 2015 that it was planning to build two new reactors in Paks and argued that – similarly to the Hinkley Point C project in the United Kingdom – there was no prohibited State aid. Finally, in both cases, the Commission declared State aid permissible, however, Austria has appealed against the Commission's decisions to the Court of Justice of the European Union (CJEU).

The issue of State aid to the Hinkley Point C nuclear power plant is relevant to the CJEU in several respects, as it gave the institution an opportunity to study this topic and nuclear energy, and with the help of these areas, the relationship between the Euratom Treaty and the TFEU. As a general rule, European Union law provides for a prohibition of State aid, as laid down in Article 107(1) TFEU. However, in order to assess whether the aid is compatible with internal market law and the competition rules, or whether the advantage in question can be regarded as a subsidy, it is essential to define the conceptual elements of that provision.<sup>2</sup>

In this article, I use the terms “subsidy” and “aid” as synonyms, although aid is a broader concept, as it includes not only positive contributions but also measures that alleviate the financial burden on a given company or group of companies. The

---

<sup>1</sup> Treaty on the Functioning of the European Union, consolidated version (OJ C 202/47, 07.06.2016), hereinafter: TFEU.

<sup>2</sup> Article 107(1) TFEU: Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.

above-mentioned provisions can only be considered State aid (and as such, prohibited) if they originate from State resources, so that the economic advantage is a factor for the undertaking and therefore does not provide services of a general nature (selective) and has or may have an effect on competition and trade between Member States.<sup>3</sup> It is clear from the text of Article 107 TFEU that the primary legislation does not mean *expressis verbis* that State aid is prohibited, only that, if the elements of the concept are exhausted by a Member State, its conduct is incompatible with the internal market, which can be made permissible by eliminating said conduct.<sup>4</sup>

### THE ROLE OF THE EUROPEAN COMMISSION IN INTERPRETING STATE AID

The United Kingdom notified the European Commission in October 2013 of its new investment plan for Hinkley Point C for *ex ante* authorization, which decided to carry out a detailed procedure in December 2013 due to the possibility of State aid.<sup>5</sup>

At that time, the Commission issued its Communication covering the period 2014–2020, which sets out rules and formulates guidelines for the forms of State aid related to climate change and sustainable energy supply that are, under certain conditions, compatible with the internal market under Article 107(3)(c) TFEU. This article is also of a great importance in connection with the investment in Hinkley Point C.<sup>6</sup>

---

<sup>3</sup> H. Eszter, *Az állami támogatások és a verseny*, Budapest 2003; Zs. Bolf-Galamb, *Az európai uniós versenyjogi értelemben vett állami támogatási és közbeszerzési szabályok kapcsolata*, “Közbeszerzési Szemle” 2012, no. 6, p. 49.

<sup>4</sup> The Almunia package is consisted of four instruments: Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest (OJ EU C 8, 11.01.2012, pp. 4–14); Commission Decision of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (OJ EU L 7, 11.01.2012, pp. 3–10); Communication from the Commission – European Union framework for State aid in the form of public service compensation (2011) (OJ EU C 8, 11.01.2012, pp. 15–22); Commission Regulation (EU) no. 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest (OJ EU L 114, 26.04.2012, pp. 8–13). See A. Fercic, N. Samec, *European Union State Aid Law and Policy, and Local Public Services*, “Lex Localis” 2014, vol. 12(2), pp. 267–287.

<sup>5</sup> Commission Decision (EU) 2015/658 of 8 October 2014 on the aid measure SA.34947 (2013/C) (ex 2013/N) which the United Kingdom is planning to implement for support to the Hinkley Point C nuclear power station (notified under document C(2014) 7142) (OJ EU L 109, 28.04.2015, pp. 44–116).

<sup>6</sup> D. Suna, G. Resch, *Is nuclear economical in comparison to renewables?*, “Energy Policy” 2016, vol. 98, pp. 199–209.

When considering the admissibility of state aid, the Commission takes into account a number of aspects: the Europe 2020 strategy, which sets targets for a competitive and secure energy system and sustainable growth, was of great importance in the development of the aspects considered in the present proceedings. It is also essential to demonstrate the need for state intervention for the correction of market failures.

To do this, it must be demonstrated that the market alone cannot achieve an effective result due to the presence of market failures (such as negative externalities or coordination gaps). However, it should also be examined whether there are any other policies and measures in place to address the current situation as these take precedence. The incentive effect of subsidies can be demonstrated if, as a result of the aid, the beneficiary changes its behavior in order to improve the level of environmental protection or the functioning of a secure, affordable and sustainable energy market, which it would not otherwise undertake in the absence of the aid. In accordance with the principle of proportionality, the aid must be limited to the minimum needed and must not distort trade between Member States, that is to say, the positive effects of the achievement of the objective of common interest must outweigh the distortions.

According to the Commission, there are two forms of trade distortion (in terms of target area), affecting either the product/service market or a specific geographic market. In the case of aid for environmental protection, the former is a feature, as it results in a preference for environmentally friendly products, which is linked to the purpose of the measure.

However, State aid can also hamper the positive effects of market mechanisms while contributing to environmental and energy objectives, which can lead to a situation where more efficient and innovative competitors are unable to enter the market; as such, State intervention itself can slow down development. According to the Commission's 2017 report, state aid expenditure increased significantly in 2017 compared to 2016, both in absolute terms and relative to GDP. Member States spent €116.2 billion, or 0.76% of GDP, on state aid, an increase of around 0.04% compared to 2016. State aid has fallen since the 1980s, when it accounted for around 2% of EU GDP, falling to 1% in the 1990s and 0.5% in the 2000s. However, since 2014, the declining trend has been reversed, mainly due to the provision of subsidies for renewable energy sources.

In 2017, the Commission registered 3,334 state aid cases, of which about 11% was related to the environment and energy efficiency, but almost 53% of all expenditure went to this area.

Most of these cases are used to support renewable energy sources, so it is understandable that the European Union declares them more acceptable.<sup>7</sup> According

---

<sup>7</sup> *State Aid Scoreboard 2018: Results, trends and observations regarding EU28 State Aid expenditure reports for 2017*, 07.01.2019, [https://ec.europa.eu/competition/state\\_aid/scoreboard/state\\_aid\\_scoreboard\\_2018.pdf](https://ec.europa.eu/competition/state_aid/scoreboard/state_aid_scoreboard_2018.pdf) [access: 12.08.2020].

to the 2014 Commission Communication, the implementation of climate change objectives is also emphasized in connection with the promotion of renewable energy sources.

With regard to the admissibility of the subsidy, it is essential that it be granted as a premium paid in excess of the market price, that the beneficiaries have countervailing duties and that measures be taken which do not encourage operators to produce in the event of negative prices.<sup>8</sup>

### COMPARISON OF STATE AID ISSUES RELATED TO THE HINKLEY POINT C AND PAKS II NUCLEAR POWER PLANTS

It is interesting to examine and categorize the questions referred to the CJEU for a preliminary ruling between 2009 and 2016, which can be divided into three parts when examining the relationship between energy regulation and State aid. The first group includes cases related to public service obligations (e.g., the *Federutility* case).<sup>9</sup>

Table 1. Comparison of State aid issues related to the Hinkley Point C and Paks II nuclear power plants

Viewpoints	Hinkley Point C	Paks II
Direct goal	Expansion of existing nuclear capacity (Treaty of Euratom)	Expansion of existing nuclear capacity (Treaty of Euratom)
Indirect goal	Security of energy supply and contribution to environmental objectives	Security of energy supply and contribution to the 2020 targets for GHG emissions
Implementing company	NNGB is a subsidiary of EDF (French company)	Russian-owned Rosatom
Task of the implementing company	Nuclear power plant development	Nuclear power plant development
State aid	Compensation agreement for EDF, possibility of indemnification, loan guarantee	Russia gives credit line
Operator	NNBG (private company)	Paks II Atomenergia Fejlesztési Zrt., which belongs to the state-owned MVM group
Public procurement procedure	Did not happen	Did not happen
Commission investigation starting date	December 2013	November 2015
Argument	Service of general economic interest, market investor principle	Market economy investor principle

<sup>8</sup> Communication from the Commission – Guidelines on State aid for environmental protection and energy 2014–2020 (OJ C 200, 28.06.2014, pp. 1–55).

<sup>9</sup> C-265/08, *Federutility és társai v. Autorità per l'energia elettrica e il gas*, ECLI:EU:C:2010:205.

Viewpoints	Hinkley Point C	Paks II
Reason for rejecting an argument	Businesses operating under normal market conditions are already operating satisfactorily and no public tenders have been issued. It is a long-term investment whose return is doubtful	It is a long-term investment whose return is doubtful, so a private investor may not invest in a similar project
Existence of state aid	Yes Legal basis: Article 107(3) TFEU	Yes Legal basis: Article 107(3) TFEU
Common interest	Yes	Yes
Action of Austria against the decision of the Commission	Yes	Yes
Austria's main arguments	<ul style="list-style-type: none"> <li>– incorrect application of Article 107(3)(c) TFEU: the absence of an objective of general interest</li> <li>– there is no market failure</li> <li>– not a novel technology</li> <li>– operating aid, which is incompatible with the internal market</li> <li>– not well-defined support elements</li> <li>– disproportionate nature of the measure</li> <li>– there was no justification and there was no procurement</li> </ul>	<ul style="list-style-type: none"> <li>– incorrect application of Article 107(3)(c) TFEU: the absence of an objective of general interest</li> <li>– there is no market failure</li> <li>– disproportionate nature of the measure</li> <li>– disproportionate distortions of competition</li> <li>– the project is experiencing difficulties</li> <li>– strengthening of dominance</li> <li>– not well-defined support elements</li> <li>– there was no justification and there was no procurement</li> </ul>
Decisions of the General Court	Adoption of a Commission decision	In progress
Judgement of the CJEU	Adoption of a Commission decision	–

Source: Author's own elaboration (based on the Commission's decisions and Austrian actions).

In these cases, private parties are trying to create rules that hinder liberalization, in places where the European Union prohibits increased national regulation to help open up the market. The second group of cases concerns energy supply subsidies related to renewable energy sources. In these cases as well (e.g., the *Essent* case<sup>10</sup>), national action against the completion of the internal energy market seems to be reflected. In the third category (e.g., the *Vent de Colère* case<sup>11</sup>), no notification has been filed with the European Commission for the prior approval of State aid for renewable energy sources, in accordance with Article 108(3) TFEU.<sup>12</sup>

State aid cases for renewable energy do not normally go to the CJEU; in case an issue arises, the Commission usually settles it without an appeal from a Member State.

Between 2014 and 2019, seven cases were brought before the CJEU involving the link between state aid and renewable energy sources. Two of these were

<sup>10</sup> C-204/12–C-208/12, *Essent Belgium NV v. Vlaamse Reguleringsinstantie voor de Elektriciteits- en Gasmarkt*, ECLI:EU:C:2014:2192.

<sup>11</sup> C-262/12, *Vent De Colère and Others*, ECLI:EU:C:2013:851.

<sup>12</sup> L. Hancher, M.F. Salerno, *Analysis of Current Trends and a First Assessment of the new package*, [in:] *Research Handbook on EU Energy Law and Policy*, eds. R. Leal-Arcas, J. Wouters, Cheltenham 2017, pp. 48–67.

preliminary ruling proceedings and in five cases the annulment of a Commission decision was sought from the CJEU. The latter group also includes proceedings before the CJEU for the licensing of the Hinkley Point C nuclear power plant, in which renewable energy sources were not at the center, but the environmental relevance of nuclear energy was raised.<sup>13</sup>

On 6 July 2015, the Republic of Austria applied to the General Court for annulment of a Commission's decision authorizing a British nuclear investment pursuant to Article 263 TFEU. The General Court approved the Commission's decision. It should be noted that, in parallel with the General Court proceedings, the Commission published a "Notice on the concept of State aid" on 19 May 2016. The Communication summarizes the concepts that can be extracted from the case law on the main elements of State aid.<sup>14</sup>

#### JUDGEMENT OF THE CJEU

The Republic of Austria appealed against the decision to the CJEU which upheld the General Court's reasoning on most points but clarified or supplemented it in some places.<sup>15</sup> First, Austria submitted that the promotion of nuclear energy cannot be regarded as an objective in the public interest but merely as a private interest of the recipient of the aid.

The CJEU rejected Austria's argument, on the basis of its previous case-law, because unlike Article 107(3)(b) TFEU, point (c) does not require the pursuit of an objective of a common interest (only two other conjunctive conditions).<sup>16</sup> In this context, the CJEU departed from the decision of the General Court, which had examined the pursuit of an objective in the public interest (as did the Commission), while the CJEU did not consider it necessary because of Article 107(3)(c) TFEU.<sup>17</sup>

Austria also referred to the Commission's guidelines on State aid; however, none of these contain provisions on nuclear energy and, more importantly, the CJEU is not required to follow the Commission's practice.<sup>18</sup> The CJEU also followed

---

<sup>13</sup> *State aid: Commission concludes modified UK measures for Hinkley Point nuclear power plant are compatible with EU rules*, 08.10.2014, [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_14\\_1093](https://ec.europa.eu/commission/presscorner/detail/en/IP_14_1093) [access: 12.08.2020].

<sup>14</sup> C-594/18, *P. Republic of Austria v. European Commission*, ECLI:EU:C:2020:352.

<sup>15</sup> T-356/15, *Republic of Austria v. European Commission*, ECLI:EU:T:2018:439.

<sup>16</sup> C-594/18, *P. Austria v. Commission*, ECLI:EU:C:2020:742, 30.

<sup>17</sup> P. Craig, G. de Búrca, *EU Law, Text, cases and Materials*, Oxford 2015, pp. 1141–1144.

<sup>18</sup> Communication from the Commission – Framework for State aid for research and development and innovation (OJ C 198, 27.06.2014, pp. 1–29); Communication from the Commission – Guidelines on State aid for environmental protection and energy 2014–2020 (OJ C 200, 28.06.2014, pp. 1–55); Communication from the Commission – EU Guidelines for the application of State aid rules in re-

the General Court's ruling, which states that the relationship between the Euratom Treaty and the TFEU can be traced back to the principle of *lex specialis derogat legi generali* (a special rule should be applied as opposed to the general one), however, the former does not contain provisions on State aid, so, in the present case, the CJEU must apply the provisions of Article 107 TFEU.

One of the conjunctive conditions of Article 107(3)(c) TFEU is the existence of aid to promote the development of certain economic activities which must be considered in parallel with the Euratom Treaty (supporting investment in new facilities), so that State aid for the construction of new nuclear generation capacity is permissible.<sup>19</sup> The CJEU rejected the General Court's finding that the Euratom Treaty did not allege that these investments were contrary to the principles of environmental protection, precaution, the principle of "polluter pays" and sustainability. The reason for the above is that any measure which is found to infringe the protection of the environment cannot be considered compatible with the internal market.<sup>20</sup>

In this case, the investment pursues fundamental objectives of the Union's energy policy, such as ensuring the functioning of the energy market and the security of energy supply – respecting the fact that Member States can determine their own energy mix – which does not harm the environmental objectives.<sup>21</sup>

The CJEU has held that the compatibility of State aid with the internal market is not conditional on the investment in a nuclear power plant remedying a market failure. In addition, it has agreed with the General Court's decision to examine the proportionality of the measures on the basis of two factors: the distortion of competition and the distortion of competition caused by the State measures.<sup>22</sup> When determining whether the aid affects trading conditions to an extent contrary to Community interests, the potential positive and negative effects must be examined only with regard to competition and trade between the Member States. The case law shows that it is not necessary to prove the actual distortion of competition and trade but it is sufficient for the Commission to establish that State aid is probably capable of doing so.

After all, the concept of competition includes not only existing but also potential competition, so the regulation also covers companies that only want to enter the market now.<sup>23</sup>

---

lation to the rapid deployment of broadband networks (OJ C 25, 26.01.2013, pp. 1–26); Guidelines on regional State aid for 2014–2020 (text with EEA relevance) (OJ C 209, 23.07.2013, pp. 1–45).

<sup>19</sup> C-594/18, *P. Austria v. Commission*, ECLI:EU:C:2020:742, 32–33.

<sup>20</sup> L. Hancher, M. Klasse, *Aid to Nuclear and Coal*, [in:] *State Aid and the Energy Sector*, eds. L. Hancher, A. de Hauteclouque, F.M. Salerno, Oxford 2018, pp. 200–205.

<sup>21</sup> C-594/18, *P. Austria v. Commission*, ECLI:EU:C:2020:742, 41–44.

<sup>22</sup> *Ibidem*, 56.

<sup>23</sup> C-148/04, *Unicredito Italiano SpA v. Agenzia delle Entrate, Ufficio Genova 1*, ECLI:EU:C:2005:774, 54–55.

Operating aid to NNBG (which is prohibited under the general rules) promotes the development of economic activity and has not altered trading conditions to an extent contrary to the common interest and must be considered equivalent to investment aid in the present case.

## CONCLUSION

Months before the end of the transition period, the CJEU has identified what might be the last State aid milestone for the UK. The judgement confirms the General Court's judgement of 2018, which reinforced the Commission's decision.

The Commission's decision has provoked widespread controversy, especially in Austria, a Member State with no nuclear power plants in its territory, who applied to the General Court (and then to the CJEU) for annulment of the Commission's decision. Interestingly, Germany, another Member State abstaining from nuclear energy, has not intervened in this case.

The CJEU gave a very positive answer to the central question – the State aid granted to Hinkley Point C can be considered compatible with the internal market – but without limiting its scope to the Euratom Treaty (as the General Court did). Overall, the Court's judgement is not surprising. There were no clear rules on this subject that would have indicated a different outcome and the decision follows the opinion of the Advocate General given in May 2020 as well. In this case, it was not a question of the existence of State aid (similarly to the General Court), but it was the permissibility of such measures that had to be decided on.

Examining the case law of the CJEU, it appears that the Court has a broad interpretation of the definition of State aid and its constituent elements but it interprets their permissibility narrowly. The reason for this is found in the market-distorting effects of state intervention and in the dominance of the neoliberal perception. Despite the strengthening of interventionist views following the global economic crisis, which emphasize the importance and significance of state regulation, this concept does not yet seem to be reflected in state aid cases in the CJEU (a relatively small number of cases in the energy sector). However, since 2009, the Court's judgements have shown a reduction in permissibility due to environmental requirements.

In 2014, the European Commission adopted guidelines on environmental and energy subsidies for the period 2014–2020, retaining the same assessment principles for internal market compatibility standards. The aim of this document is to address the market distortions caused by the Commission's frequent acceptance of the mandatory feed-in tariff for renewable energy sources. The previous mechanism has encouraged the growth of renewable energy sources within the energy mix and has contributed to the 2020 climate policy goals. As a result, the prices of these energy sources did not depend on supply and demand, in line with market effects, so the

Commission set itself the objective of reducing the number of permissible cases in this area. However, this number saw an increase instead of a reduction. The Hinkley Point C decision confirms that State aid to nuclear energy is permissible, clarifies the application of these rules, provides important guidelines for the future and corrects the interpretation of the Euratom Treaty by the General Court which has given it a varied scope, in particular its Article 106a para. 3(3).

According to the General Court, para. 3 of Article 106a of the Euratom Treaty prevented State aid from being assessed negatively on grounds of environmental protection. But the Court deviated from this part of the decision and ruled that aid in breach of EU environmental law could not be considered compatible with the internal market and therefore could not be allowed. This paragraph of the judgement suggests that environmental requirements are beginning to come to the fore in several areas and that requirements are at the same level as the objective of security of supply.<sup>24</sup>

The requirement of an objective of common interest raises interesting questions, as it is not a requirement for the compatibility of aid.<sup>25</sup>

Based on the decision of the CJEU, it has only been expected that the aid must not have a contrary – adverse – effect on the common interest. However, this conclusion contradicts the Commission's previous practice, for example, "Guidelines on State aid for environmental protection and energy 2014–2020" (in particular Articles 27(a)<sup>26</sup> and 30).

The CJEU does not address this contradiction, pointing out that these instruments are "soft law" acts and the literal provisions of the Treaty are applicable.

However, the Commission must address this in the future and adapt its practice to this. The Court is not bound by, but generally follows the Commission's practice. In the present case, it prefers a literal interpretation of the Treaty, despite the fact that the Commission has also been examining the pursuit of an objective of common interest for some time in the context of Article 107(3)(c) TFEU.

It is questionable whether it was appropriate to change this long-standing system of criteria (in practice) while the previous practice applies to the other points of Article 107 TFEU.

The judgement is also relevant in the Paks II case, where Austria has also initiated proceedings under Article 263 TFEU. The Court's judgement on the Hinkley Point C nuclear power plant is helpful for Hungary. On the one hand, it states that since energy policy is a shared competence, the Member States have the sovereign right to

---

<sup>24</sup> C-31/17, *Cristal Union v. Ministre de l'Économie et des Finances*, ECLI:EU:C: 2018:168, 34; C-465/15, *Hüttenwerke Krupp Mannesmann*, ECLI:EU:C:2017:640, 26.

<sup>25</sup> C-594/18, *P. Austria v. Commission*, ECLI:EU:C:2020:742, 20.

<sup>26</sup> Article 27(a): Contribution to a well-defined objective of common interest: a State aid measure must aim at an objective of common interest in accordance with Article 107(3) of the Treaty.

decide on their energy baskets and, on the other hand, to achieve their energy policy goals of security of electricity supply and climate protection.

In my view, the General Court will also uphold the Commission's decision in the case of Paks II, but it can already do so in possession of the relevant findings of the CJEU's decision in relation to the Commission's findings precluding the need for re-appeal. The most significant difference between the case of Paks II and that of the British power plant is that Paks II is state-owned and that in order to realize the project, it became necessary to obtain a loan from Russia. In addition, while at the time of the Hinkley Point C project's approval, both the United Kingdom and France (as the Hinkley Point C nuclear power plant was built by a French company) were members of the European Union, in the case of Paks II, the builder Rosatom is owned by Russia.

## REFERENCES

### Literature

- Fercic A., Samec N., *European Union State Aid Law and Policy, and Local Public Services*, "Lex Localis" 2014, vol. 12(2), DOI: [https://doi.org/10.4335/12.2.267-287\(2014\)](https://doi.org/10.4335/12.2.267-287(2014)).
- Bolf-Galamb Zs., *Az európai uniós versenyjogi értelemben vett állami támogatási és közbeszerzési szabályok kapcsolata*, "Közbeszerzési Szemle" 2012, no. 6.
- Craig P., Búrca G. de, *EU Law, Text, cases and Materials*, Oxford 2015.
- Hancher L., Klasse M., *Aid to Nuclear and Coal*, [in:] *State Aid and the Energy Sector*, eds. L. Hancher, A. de Hauteclouque, F.M. Salerno, Oxford 2018.
- Hancher L., Salerno M.F., *Analysis of Current Trends and a First Assessment of the new package*, [in:] *Research Handbook on EU Energy Law and Policy*, eds. R. Leal-Arcas, J. Wouters, Cheltenham 2017.
- Hargita E., *Az állami támogatások és a verseny*, Budapest 2003.
- Suna D., Resch G., *Is nuclear economical in comparison to renewables?*, "Energy Policy" 2016, vol. 98, DOI: <https://doi.org/10.1016/j.enpol.2016.08.023>.

### Netography

- State aid: Commission concludes modified UK measures for Hinkley Point nuclear power plant are compatible with EU rules*, 08.10.2014, [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_14\\_1093](https://ec.europa.eu/commission/presscorner/detail/en/IP_14_1093) [access: 12.08.2020].
- State Aid Scoreboard 2018: Results, trends and observations regarding EU28 State Aid expenditure reports for 2017*, 07.01.2019, [https://ec.europa.eu/competition/state\\_aid/scoreboard/state\\_aid\\_scoreboard\\_2018.pdf](https://ec.europa.eu/competition/state_aid/scoreboard/state_aid_scoreboard_2018.pdf) [access: 12.08.2020].

### Legal acts and documents

- Commission Decision (EU) 2015/658 of 8 October 2014 on the aid measure SA.34947 (2013/C) (ex 2013/N) which the United Kingdom is planning to implement for support to the Hinkley Point C

- nuclear power station (notified under document C(2014) 7142) (OJ EU L 109, 28.04.2015, pp. 44–116).
- Commission Decision of 20 December 2011 on the application of Article 106(2) of the Treaty on the Functioning of the European Union to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (OJ EU L 7, 11.01.2012, pp. 3–10).
- Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest (OJ EU C 8, 11.01.2012, pp. 4–14).
- Communication from the Commission – European Union framework for State aid in the form of public service compensation (2011) (OJ EU C 8, 11.01.2012, pp. 15–22).
- Commission Regulation (EU) no. 360/2012 of 25 April 2012 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid granted to undertakings providing services of general economic interest (OJ EU L 114, 26.04.2012, pp. 8–13).
- Communication from the Commission – EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks (OJ C 25, 26.01.2013, pp. 1–26).
- Communication from the Commission – Framework for State aid for research and development and innovation (OJ C 198, 27.06.2014, pp. 1–29).
- Communication from the Commission – Guidelines on State aid for environmental protection and energy 2014–2020 (OJ C 200, 28.06.2014, pp. 1–55).
- Guidelines on regional State aid for 2014–2020 (text with EEA relevance) (OJ C 209, 23.07.2013, pp. 1–45).
- Treaty on the Functioning of the European Union, consolidated version (OJ C 202/47, 07.06.2016).

### Case law

- C-31/17, *Cristal Union v. Ministre de l'Économie et des Finances*, ECLI:EU:C:2018:168.
- C-148/04, *Unicredito Italiano SpA v. Agenzia delle Entrate, Ufficio Genova 1*, ECLI:EU:C:2005:774.
- C-204/12–C-208/12, *Essent Belgium NV v. Vlaamse Reguleringsinstantie voor de Elektriciteits- en Gasmarkt*, ECLI:EU:C:2014:2192.
- C-262/12, *Vent De Colère and Others*, ECLI:EU:C:2013:851.
- C-265/08, *Federutility és társai v. Autorità per l'energia elettrica e il gas*, ECLI:EU:C:2010:205.
- C-465/15, *Hüttenwerke Krupp Mannesmann*, ECLI:EU:C:2017:640.
- C-594/18, *P. Austria v. Commission*, ECLI:EU:C:2020:742.
- C-594/18, *P. Republic of Austria v. European Commission*, ECLI:EU:C:2020:352.
- T-356/15, *Republic of Austria v. European Commission*, ECLI:EU:T:2018:439.

### ABSTRAKT

Celem artykułu jest omówienie orzeczenia Trybunału Sprawiedliwości Unii Europejskiej (TSUE) w sprawie elektrowni jądrowej Hinkley Point C. Inwestycja ta może być rozpatrywana w związku z inwestycją Paks II, dlatego również porównano te dwie inwestycje. Oba projekty zostały zbadane przez Komisję Europejską, która odgrywa ważną rolę w zakresie przyznawania pomocy publicznej na projekty Hinkley Point C i Paks II. Ponadto miała na nie wpływ decyzja TSUE. Autorka uznaje koncepcję pomocy Komisji Europejskiej za pozytywną, ponieważ kraje słabiej rozwinięte nie są zmuszone do wykorzystywania wyłącznie odnawialnych źródeł energii, lecz także uwzględnia się aspekty ekologiczne i bezpieczeństwa energii jądrowej (np. elektrownie jądrowe Hinkley Point C i Paks II).

W obu przypadkach dotowanie zostało dopuszczone, ale z różnych powodów. W tych przypadkach widać granice unijnej polityki energetycznej, czyli prawo do wyboru pakietu oraz pierwszeństwo bezpieczeństwa energetycznego i zrównoważonego rozwoju. Dla przykładu sektor energetyczny w Wielkiej Brytanii został podzielony między uczestników rynku, ale na Węgrzech energia jądrowa pozostała pod kontrolą państwa. W pierwszym rozwiązaniu państwo chciało udowodnić zrekompensowanie pomocy na rzecz usług rynku powszechnego, a w drugim podkreślono zasadę inwestora rynkowego, aby pokazać, że żaden inny uczestnik rynku nie działa w inny sposób. Argumenty te nie zostały przyjęte. Pomoc państwa została udzielona w obu przypadkach z dopuszczalnych powodów, ponieważ inwestycje te służą celom polityki ochrony środowiska i bezpieczeństwa energetycznego. Decyzje te pokazują, że w wyniku starań podejmowanych na rzecz ochrony środowiska wzrosła zależność od energii i nie można tego problemu rozwiązać, jedynie zachęcając do korzystania z odnawialnych źródeł energii. Można tu stwierdzić pozytywne podejście Komisji Europejskiej, na które wpływ ma zwiększona rola regulacyjna państwa. Zdaniem autorki pojawia się ona również w decyzjach proekologicznych, które odnoszą się do realizacji porozumienia paryskiego i uwzględnienia wymogów środowiskowych w polityce. Ponadto Unia Europejska stara się utrzymać wiodącą rolę w gospodarce, co można osiągnąć poprzez zmniejszenie zależności energetycznej, a korzystanie z energii pochodzącej wyłącznie ze źródeł odnawialnych nie jest odpowiednim rozwiązaniem. Omawiany wyrok TSUE jest istotny pod wieloma względami. W artykule skupiono się przede wszystkim na kwestii ochrony środowiska, pomocy państwa oraz na związku między Traktatem ustanawiającym Europejską Wspólnotę Energii Atomowej a Traktatem o funkcjonowaniu Unii Europejskiej.

**Słowa kluczowe:** TSUE; Komisja Europejska; orzeczenie; elektrownia jądrowa; kontrola; unijna polityka energetyczna; zrównoważony rozwój; państwo