

State Aid in Energy: how to identify State aid. Practical examples.

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Challenges to the definition of State aid

EEG (28 March 2019, Case C-405/16 P, Germany v. Commission):

- The ***existence of State Resources*** has been challenged by Germany: question about whether funds managed by private entities (like transmission system operators) can still be considered "State resources" if they are under the dominant influence of public authorities.
- The judgement concluded that the absence of obligation from private TSO to recover these costs of a support measure could, in this specific case, make the measure no-aid.

Paks II (1 September 2025 Case C-59/23 P, Austria v. Commission):

- The Court of Justice annulled the Commission decision on the grounds that ruled that the European Commission failed to properly assess whether the direct award of the construction contract to a Russian company complied with EU public procurement rules.
- The Court considered the contract award as a core part of the aid mechanism. Therefore, public procurement rules represented an ***intrinsically linked provision***.



What makes a measure aid or no aid?

COMPETITIVE BIDDING

Electricity markets are cleared through a competitive bidding process, which reduces the selective advantage

COMPETENCE OF THE TSO

Some electricity markets (balancing markets and ancillary services) are introduced by the TSO, as part of their competence described in the Electricity Directive, without State involvement

EXISTENCE OF AN EU OBLIGATION

The introduction of electricity market (Day-ahead and intraday markets) are an obligation stemming from EU law, leaving no discretion from EU Member States to implement it (or not)

LACK OF STATE INVOLVEMENT

Some electricity markets (e.g. forward market) are implemented by producers, consumers and intermediaries, without the involvement of the State nor the TSO



Which of these schemes is State aid?

DECENTRALISED CAPACITY OBLIGATIONS

Retailers are subject to an obligation to purchase capacity certificates from producers, storage or demand-response operators.

PROCUREMENT OF INTERRUPTIBILITY

The TSO procures capacity able to disconnect in case electricity demand cannot be met by the available supply. The measure is financed through a charge on electricity consumption

TSO INFRASTRUCTURE

The State provides funds to the TSO for the construction of electricity infrastructure to be used for the transmission of electricity

PUBLIC GUARANTEES FOR PPA

A public authority provides a guarantee to back PPAs so that in case of consumers default, the producer still receive payments under the PPA



Thank you!



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