

GLS State Aid Webinar

CASE REFERENCE

PreussenElektra AG v Schleswag AG (C-379/98)

European Court of Justice

13 March 2001

Westlaw Case Analysis 22 pages

Status:  Positive or Neutral Judicial Treatment

PreussenElektra AG v Schleswag AG (C-379/98)

European Court of Justice

13 March 2001

Case Analysis

Where Reported

[2001] All E.R. (EC) 330; [2001] E.C.R. I-2099; [\[2001\] 2 C.M.L.R. 36](#); [2001] C.E.C. 217; [\[2002\] Env. L.R. 3](#)

Case Digest

Subject: European Union **Other related subjects:** Competition law

Keywords: Electricity supply industry; Free movement of goods; Quantitative restrictions; State aid

Summary: free movement of goods; state aids; electricity supply industry; obligation to purchase renewable energy

Abstract: The German Court referred a question to the ECJ on whether a German law which required private electricity suppliers to purchase a proportion of their supply from renewable sources at guaranteed minimum prices which exceeded the true market value and, further, required the suppliers to bear the consequent costs without passing them on to consumers, constituted unlawful state aid to the electricity producers pursuant to the EC Treaty Art.92(1) (now, after amendment, Art.87 EC) or an unlawful interference with intra Community trade pursuant to Art.30 (now, after amendment, Art.28 EC).

Held, giving a preliminary ruling, that (1) in order to constitute a state aid for the purposes of Art.92(1), only those advantages accruing either indirectly or directly via state resources were relevant. In the instant case, the obligation to purchase did not involve any direct or indirect transfer of state resources to the producers and neither did the requirement that the supply companies bear the costs incurred as a consequence of the obligation. Accordingly, the legislation in question did not constitute an unlawful state aid to the electricity production companies, and (2) whilst the legislation in question could potentially amount to a quantitative restriction having the effect of hindering intra Community trade, it was vital to have regard to the objectives of the provision and the distinguishing characteristics of the electricity supply industry. Having regard to the priority Community objective of encouraging renewable energy sources as an aid to combating climate change and the difficulty of establishing the source of electricity once it was part of the system used for transmission, the provisions in question were not incompatible with Art.30.

Related Cases

PreussenElektra AG v Schleswag AG (C-379/98)

[2001] E.C.R. I-2099; AGO

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[\[2000\] S.T.I. 1001](#); ECJ (6th Chamber); 2000-07-13

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France v Ladbroke Racing Ltd (C-83/98 P)

[\[2000\] E.C.R. I-3271](#); [\[2000\] 3 C.M.L.R. 555](#); ECJ; 2000-05-16

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[\[2000\] E.C.R. I-151](#); [\[2002\] 1 C.M.L.R. 25](#); ECJ (5th Chamber); 2000-01-13

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[\[1999\] E.C.R. I-6269](#); [\[2001\] 2 C.M.L.R. 21](#); [\(1999\) 22 I.P.D. 22113](#); [Times, October 12, 1999](#); ECJ (5th Chamber); 1999-09-21

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