

Greenpeace Energy goes before the European Court of Justice

Legal action on subsidies for Britain's Hinkley Point C nuclear power plant goes into the next round

Hamburg/Berlin, 12 December 2016. Greenpeace Energy, a green energy supplier headquartered in Hamburg, is going before the European Court of Justice (ECJ) with a legal action against subsidies for Britain's Hinkley Point C nuclear power plant. In 2015, together with other energy suppliers, Greenpeace Energy lodged a complaint with the General Court of the EU in Luxembourg against the EU Commission after the Commission approved billions of euros of State aid for the controversial nuclear project. These subsidies will distort competition on the electricity market in Europe and in Germany at the cost of renewable energies. The General Court dismissed this action as inadmissible in September and Greenpeace Energy has now lodged an appeal.

"Especially because Hinkley Point C is seen as a blueprint for many other nuclear projects in Europe, and the General Court completely ignores this fact, we have decided to continue the legal battle against unfair nuclear subsidies and see this through to the end", says Sönke Tangermann, managing director of Greenpeace Energy. Hungary, Poland, the Czech Republic and Slovakia also have plans to build new reactors. As intervenors on behalf of the Commission, these four countries have been involved in this dispute as well as in separate legal proceedings brought before the ECJ by Austria. Plans for new nuclear power plants (NPPs) in Europe in coming years foresee the construction of altogether 34 gigawatts of capacity.

Alone the Paks II NPP, under planning in Hungary and with a projected capacity of 2.4 gigawatts, is apparently meant to export electricity, especially to Germany. Just a few weeks ago, the EU Commission closed infringement proceedings against Hungary that had been initiated due to the lack of a tendering procedure for this NPP project. Observers suspect that the Commission – as earlier with Hinkley Point C – could approve the State aid package earmarked for Paks II in a second round of proceedings. "The German government is dishonest when it pretends that Germany would not be affected by the menacing return of nuclear energy to its immediate EU neighbourhood", says Sönke Tangermann. "In fact, Germany is no less exposed to nuclear risks than if these NPPs were on German soil."

Moreover, highly subsidised nuclear power from Hinkley Point C, Paks II and other NPPs would have a significant effect on electricity prices in Germany. As a study by the Energy Brainpool analysis institute in Berlin substantiates, this subsidisation distorts competition within Germany – at the expense of green energy suppliers and with considerable additional costs for the system embodied in Germany's Renewable Energies Act.

In a recent 'food for thought' paper (*Strom 2030* [Electricity in 2030]) on the future of Germany's electricity market, released by energy minister Sigmar Gabriel (SPD), Germany's energy ministry foresees more reliance in future on electricity imports from abroad due to Germany's phaseout of nuclear and coal power. "But if this leads to nuclear power from highly subsidised reactors in Hungary, the Czech Republic or Poland reaching Germany to replace electricity from

decommissioned German NPPs, this completely undermines this country's nuclear phaseout", warns Tangermann. He also makes the point that the German government, which in its electricity market scenario actually underlines the significance of eastern European countries in terms of future international market coupling, must therefore guarantee in technical, regulatory and political controls that the extremely expensive nuclear power generated in other EU states, for which great risk is accepted, does not play a role in supplying electricity to consumers in Germany.

In the appeal proceedings on the subsidies for Hinkley Point C, Greenpeace Energy's lawyers see good opportunities for proving that the General Court of the EU erred in law when it dismissed the complaint. "The court set the formal hurdle for lodging a complaint disproportionately high; only in a very general way or not at all did it acknowledge the arguments and a scientific report put forward by the appellants", says attorney Dr Dörte Fouquet. Law firm Becker Büttner Held (bbh), Greenpeace Energy's legal representative, has submitted the notice of appeal against the dismissal of the complaint to the European Court of Justice in good time.

The General Court of the EU based the inadmissibility of the action on the grounds, among others, that all competitors in the European energy market would be equally disadvantaged by subsidies for Hinkley Point C – and that Greenpeace Energy did not have a distinctive position here. But 'individual concern' (specialist jargon) is actually a formal prerequisite for gaining access to court proceedings. "Firstly, these grounds do not apply to an ambitious green energy supplier like Greenpeace Energy and its special place in the energy market", says Fouquet. "Secondly, energy companies in other EU countries will not have the opportunity in future to take legal action against decisions to approve State aid granting competition-distorting subsidies to nuclear power generation in an EU Member State in which a company like Greenpeace Energy is not established but where border-crossing energy trading is possible."

Note to editors: A fact sheet with in-depth information, and visual material, are available for downloading at www.greenpeace-energy.de/presse.html

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