

## Questions and Answers on the Legal Proceedings against Subsidies for Hinkley Point C

### What is Hinkley Point C and what is the significance of the planned subsidies?

The Hinkley Point nuclear power plant is located on England's southwest coast in Somerset. There is currently a plan to build a new Block C with two more reactors in addition to the Hinkley Point A (decommissioned) and Hinkley Point B (operational) stations that have been there since 1965. Block C was originally scheduled to go online in 2017 but more recent planning has postponed this to 2025. The British government has promised the NPP's operators a **guaranteed remuneration** of approximately 12 euro-cents per kilowatt-hour of nuclear power for 35 years. This is three times higher than the average market price and significantly higher than most green energy production receives in remuneration. This subsidy alone adds up to **more than 100 billion euros**. In addition, the British government is also providing credit guarantees and promising investors further guarantees as protection against political or economic change.

### What are the legal proceedings before the EU court about?

In **July 2015**, Greenpeace Energy, together with nine other power suppliers, lodged a complaint against the EU Commission's approval of State aid for the nuclear power plant. Above all, appellants foresaw a menacing distortion of the market occurring at their expense. Due to the high level of subsidisation, Hinkley Point C can **generate power regardless of demand** because state guarantees even out the difference to prices on the electricity exchange. This leads to **dampening effects on the wholesale price of electricity** in the UK. Because European states are connected to each other by border-crossing power lines, cheap British electricity can be traded across borders and thereby push down prices on the electricity exchange in other EU states. **This also results in a damper on prices in Germany.**

### On 26 September 2016, the General Court of the European Union (EGC) dismissed the complaint as inadmissible. What errors of law does Greenpeace Energy see in this court decision?

- **Greenpeace Energy's distinctive position in the market and its individual concern were inadequately assessed.** The group of traders dealing exclusively with green energy in the market is easily identifiable. Greenpeace Energy procures electricity from German wind turbines in the so-called 'other direct marketing' business, a form of marketing for green energy set out in Germany's Renewable Energies Act. This is clearly an individual concern for energy cooperative Greenpeace Energy which distinguishes it from most companies active in the energy market. Compared to other energy suppliers, Greenpeace Energy must reckon with severe economic disadvantage and loss of income if – through the State aid granted for the Hinkley Point C nuclear power plant – prices on the electricity exchange drop. This point was also argued at the General Court, but it was insufficiently acknowledged and wrongly understood.
- **The blueprint character of the Hinkley Point C project was misunderstood.** Even though the Commission's decision to approve British government subsidies for nuclear power emerged from an individual assessment, it nevertheless established a decision-making practice for future assessments – giving it a "blueprint character". This gave the decision a certain general validity, an important circumstance that the General Court did not recognise or acknowledge.
- **There is no option for filing the complaint at national courts.** The statement by the General Court that Greenpeace Energy could seek legal protection at national courts was an error in law. In a State aid review process, it is virtually impossible for competitors who consider an EU Commission's decision to be wrong to actually bring this decision before a national court for examination. Furthermore, the jurisdiction of the General Court of the European Union (EGC) and the European Court of Justice (ECJ) obliges national courts to be loyal and not take decisions running counter to decisions of the EU Commission, even if such national court decisions have merely provisional character. The argument of the General Court against admissibility, referring to a legal process at the

national level that is unrealistic, creates a circular argument that effectively levers out any legal protection.

- **Documents were not sufficiently acknowledged or correctly valued.** The court forced up the requirements for an appellant to prove its right to file a complaint, and it did not correctly value or acknowledge the threat of distorted competition or the individual concern of Greenpeace Energy. To prove its right to bring proceedings, an appellant does not need to submit evidence of having already suffered economic disadvantage or to quote a specific figure for the damage incurred. Rather, the appellant needs to state as specifically as possible that a noticeable adverse effect is *likely*. That is what Greenpeace Energy did.

### What are the next steps in the appeal proceedings?

The notice of appeal was submitted to the European Court of Justice in good time on 9 December 2016. This court will review whether the judges in the General Court of the EU erred in law with their grounds for inadmissibility. If that is the case, legal proceedings will be transferred back to the General Court and continued there. A decision on the appeal is expected during the first quarter of 2017 at the earliest.

### What is the significance of Brexit for the legal battle?

As long as the UK is a Member State of the EU, it is bound to European jurisprudence and the EU Commission's decisions. The UK has not yet applied to leave the EU; it may take years to complete its exit. It is possible that even after it leaves the EU, the UK will remain part of a single market for electricity; this is the case for Norway. In that case, the UK would likewise have to accept EU regulations and forego competition-distorting subsidies for its power plants.

### What other NPP projects are currently being planned in Europe?

#### United Kingdom

Oldbury, (2.6 GW); Moorside (3.4 GW); Sizewell (3.2 GW); Wylfa (2-7 GW)

**Bulgaria** (Kozloduy, 1.1 GW)

**Czech Republic** (Dukovany/Temelin, 6 GW)

**Finland** (Hanhikivi, 1.2 GW)

**Hungary** (Paks, 2.4 GW)

**Poland** (Zarnowiec and others, up to 6 GW)

**Romania** (Cernavoda, 1.5 GW)

**Slovakia** (Bohunice, 2.4 GW)

**Slovenia** (Krsko, 1.1 GW)



#### Press contact

Christoph Rasch  
 Policy and Communications Officer  
 Greenpeace Energy eG  
 Tel.: +49 (0)40 / 808110-658  
 christoph.rasch@greenpeace-energy.de  
 www.greenpeace-energy.de

Map: Adrienne Rusch / dieprojektoren.de