Reports of Cases

OPINION OF ADVOCATE GENERAL
RANTOS
delivered on 14 June 2022[1]

Joined Cases C-702/20 and C-17/21

SIA "DOBELES HES" (C-702/20)
Sabiedrisko pakalpojumu regulēšanas komisija (C-17/21)
Other parties:
Sabiedrisko pakalpojumu regulēšanas komisija,
Ekonomikas ministrija,
Finanšu ministrija,
SIA "GM",
Ekonomikas ministrija,
Finanšu ministrija

(Request for a preliminary ruling
from the Augstākā tiesa (Senāts) (Supreme Court, Latvia))

(Reference for a preliminary ruling – Article 107(1) TFEU – Obligation on the public operator to purchase from renewable energy producers at a price higher than the market price – Compensation for amounts of aid not received – Existing aid – New aid – Notification requirement – *De minimis* aid – Cumulation – Attribution of the compensation to an authority's budget that is to be used exclusively for the purposes of regulatory activities)

I. Introduction

1. The requests for a preliminary ruling from the Augstākā tiesa (Senāts) (Supreme Court, Latvia) concern the interpretation of Article 107 TFEU in relation to provisions of Latvian law on the purchase of electricity from undertakings producing electricity in hydroelectric power plants.

2. Those requests are made in the context of two disputes arising between, on the one hand, SIA "DOBELES HES" (the applicant in Case C-702/20) and SIA "GM" (the applicant in Case C-17/21) ('the applicants') and, on the other hand, the Sabiedrisko pakalpojumu regulēšanas komisija (Public Services Regulatory Commission, Latvia; 'the regulatory commission') because the regulatory commission had not, for the period between 1 March 2006 and 1 April 2010 inclusive, set the average electricity sale price that formed the basis for the calculation of the increased price at which a public body (the company AS Latvenergo) purchased the surplus electricity produced

[1] Original language: French.

by the applicants. Considering that they had been injured by the conduct of the regulatory commission, the applicants sought compensation for the loss allegedly suffered by them on account of the failure to set that price.

3. The questions submitted by the referring court to the Court for a preliminary ruling concern three 'traditional' issues related to State aid. The referring court asks, first, whether a national measure consisting in the purchase of hydroelectric energy at twice the average electricity sale price involves 'State resources', such that it can be classified as State aid. Next, that court asks whether the payment of compensation by a national court can be equated with 'State aid' within the meaning of Article 107(1) TFEU. Finally, the court puts a series of questions regarding the criteria to be taken into account in order to analyse the compatibility of that measure with EU law if the measure were to be classified as State aid.

II. Legal context

A. European Union law

1. Regulation (EU) No 1407/2013

4. Article 3, which is entitled '*De minimis* aid', of Regulation (EU) No 1407/2013,[2] provides:

'1. Aid measures shall be deemed not to meet all the criteria in Article 107(1) [TFEU], and shall therefore be exempt from the notification requirement in Article 108(3) [TFEU], if they fulfil the conditions laid down in this Regulation.

2. The total amount of *de minimis* aid granted per Member State to a single undertaking shall not exceed EUR 200 000 over any period of three fiscal years.

…'

5. Article 5(2) of that regulation reads as follows:

'*De minimis* aid shall not be cumulated with State aid in relation to the same eligible costs or with State aid for the same risk finance measures, if such cumulation would exceed the highest relevant aid intensity or aid amount fixed in the specific circumstances of each case by a block exemption regulation or a decision adopted by the Commission. …'

6. Article 7(1) of the Regulation provides, by way of transitional provisions:

'This Regulation shall apply to aid granted before its entry into force if the aid fulfils all the conditions laid down in this Regulation. Any aid which does not fulfil those conditions will be assessed by the Commission in accordance with the relevant frameworks, guidelines, communications and notices.'

[2] Commission Regulation of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Unionto *de minimis* aid (OJ 2013 L 352, p. 1).

2. Regulation (EU) 2015/1589

7. Article 1 of Regulation (EU) 2015/1589 [3] provides:

'For the purposes of this Regulation, the following definitions shall apply:

…

(b) "existing aid" means:

(i) without prejudice … to point 3 and the Appendix of Annex IV to the Act of Accession of … Latvia …, all aid which existed prior to the entry into force of the TFEU in the respective Member States, that is to say, aid schemes and individual aid which were put into effect before, and are still applicable after, the entry into force of the TFEU in the respective Member States;

(ii) authorised aid, that is to say, aid schemes and individual aid which have been authorised by the Commission or by the Council;

(iii) aid which is deemed to have been authorised pursuant to Article 4(6) of Regulation (EC) No 659/1999 [4] or to Article 4(6) of this Regulation, or prior to [Regulation No 659/1999] but in accordance with this procedure;

(iv) aid which is deemed to be existing aid pursuant to Article 17 of this Regulation;

(v) aid which is deemed to be existing aid because it can be established that at the time it was put into effect it did not constitute an aid, and subsequently became an aid due to the evolution of the internal market and without having been altered by the Member State. Where certain measures become aid following the liberalisation of an activity by Union law, such measures shall not be considered as existing aid after the date fixed for liberalisation;

(c) "new aid" means all aid, that is to say, aid schemes and individual aid, which is not existing aid, including alterations to existing aid;

…'

8. Article 2, which is entitled 'Notification of new aid', of Regulation 2015/1589 reads as follows:

'1. Save as otherwise provided in regulations made pursuant to Article 109 TFEU or to other relevant provisions thereof, any plans to grant new aid shall be notified to the Commission in sufficient time by the Member State concerned …

…'

[3] Council Regulation of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ 2015 L 248, p. 9).

[4] Council Regulation of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

9. Article 3, which is entitled 'Standstill clause', of that regulation provides:

'Aid notifiable pursuant to Article 2(1) shall not be put into effect before the Commission has taken, or is deemed to have taken, a decision authorising such aid.'

10. Article 17, which is entitled 'Limitation period for the recovery of aid', of the Regulation provides:

'1. The powers of the Commission to recover aid shall be subject to a limitation period of 10 years.

2. The limitation period shall begin on the day on which the unlawful aid is awarded to the beneficiary either as individual aid or as aid under an aid scheme ….

3. Any aid with regard to which the limitation period has expired shall be deemed to be existing aid.'

3. Directive 2002/20/EC

11. Recital 30 of Directive 2002/20/EC[5] reads as follows:

'Administrative charges may be imposed on providers of electronic communications services in order to finance the activities of the national regulatory authority in managing the authorisation system and for the granting of rights of use. …'

12. Article 12 of that directive, which is entitled 'Administrative charges', provides, in paragraph 1 thereof:

'Any administrative charges imposed on undertakings providing a service or a network under the general authorisation or to whom a right of use has been granted shall:

(a) in total, cover only the administrative costs which will be incurred in the management, control and enforcement of the general authorisation scheme …

…'

B. Latvian law

13. Article 40(1) of the Enerģētikas likums (Law on Energy), in the version thereof in force during the period from 1 June 2001 to 7 June 2005 inclusive, provides:

'Approved electricity distribution undertakings shall purchase from small hydroelectric plants the surplus electricity produced by those plants … at a price corresponding to twice the average electricity sale price. The price of such a purchase shall then be set by the regulatory authority.'

[5] Directive of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (OJ 2002 L 108, p. 21), as amended by Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 (OJ 2009 L 337, p. 37) ('Directive 2002/20').

14. Article 30(1) of the Elektroenerģijas tirgus likums (Law on the Electricity Market), in the version thereof in force during the period from 8 June 2005 to 31 December 2014 inclusive, states:

'Producers using renewable energy sources for the production of electricity who started trading before the entry into force of this Law shall sell electricity to the public operator in accordance with the … prices that applied to them on the entry into force of this Law.'

15. Article 30(3) of that law, in the version thereof in force during the period from 8 June 2005 to 14 May 2008 inclusive, provides:

'… The price of that purchase shall be borne by all electricity end customers in Latvia in proportion to their electricity consumption, where a proportion of the electricity produced from renewable energy sources is sold to the public operator or where the cost borne by that operator is subject to compensation.'

16. Article 29(1) of the likums 'Par sabiedrisko pakalpojumu regulatoriem' (Law on Public Service Regulators) provides:

'The operation of the regulatory authority shall be funded by income from the collection of the State fee for the regulation of public services and from payments for the services provided by the regulatory authority, which are set out in other legislative and regulatory provisions.'

III. The disputes in the main proceedings, the questions referred for a preliminary ruling and the procedure before the Court

17. Even before accession of the Republic of Latvia to the European Union, the legislature of that Member State had introduced legislation intended to promote the production of electricity from renewable energy sources. In particular, Article 40(1) of the Law on Energy granted small hydroelectric plants, for a period of eight years from the start of their operations, the right to sell their surplus electricity to the approved electricity distribution undertaking at twice the average electricity sale price. That price was to be set by the regulatory commission.

18. Following the Republic of Latvia's accession to the European Union, that advantage was maintained by the Law on the Electricity Market, which entered into force on 8 June 2005. Thus, over the period at issue, which runs from March 2006 to September 2008, hydroelectricity producers (like the applicants) were entitled to sell the surplus electricity that they produced to the public operator, that is to say, to the company Latvenergo, which is 100% owned by the State, at the increased price. In accordance with national law, the average electricity sale price was set by the regulatory commission in its capacity as the electricity market regulator.

19. Over the course of 2010, the Latvijas Republikas Satversmes tiesa (Constitutional Court, Latvia) held that, between 2005 and 2010, the increased price had been wrongly calculated by the regulatory commission. As a result, the applicants, who had operated hydroelectric plants during that period, claimed compensation from that authority for the losses suffered as a result of the failure to set the price in question,[6] and then brought proceedings before the administrative courts when their claims were rejected.

[6] The alleged loss corresponds to the difference between the price paid to the applicants by the public operator and the price at which that operator would have had to purchase the electricity if the average electricity sale price had been set for the period from 1 March 2006 to 30 November 2007 inclusive in the case of DOBELES HES and from 1 March 2006 to 30 September 2008 in the case of GM.

20. By two judgments of 31 May and of 10 July 2019, the Administratīvā apgabaltiesa (Regional Administrative Court, Latvia) ordered the regulatory commission to pay to them the amounts of EUR 3 406.63 and EUR 662.26 respectively. However, taking into account the opinion of the Commission which it had sought in the course of the proceedings, that court made the payment of those amounts subject to the condition precedent that they be notified to the European Commission as State aid and that the Commission approves them or is deemed to have approved them.

21. The regulatory commission lodged an appeal on a point of law before the l'Augstākā tiesa (Senāts) (Supreme Court, Latvia), against those judgments. That court has decided to stay the proceedings in the two cases and to refer the following questions to the Court for a preliminary ruling in each of those cases:

'(1) Must the obligation imposed on the public operator to purchase electricity at a price higher than the market price from producers who use renewable energy sources to generate electricity, relying on the obligation imposed on the end consumer to pay in proportion to use, be deemed to constitute intervention by the State or through State resources for the purposes of Article 107(1) [TFEU]?

(2) Is the concept of "liberalisation of the market in electricity" to be interpreted as meaning that liberalisation must be deemed to have already occurred where certain aspects of free trade exist, such as, for example, contracts concluded by a public operator with suppliers from other Member States? Can liberalisation of the market in electricity be deemed to begin when the law grants some electricity users (for example, electricity users connected to the transport network or non-domestic electricity users connected to the distribution network) the right to change electricity distributor? What effect do developments in the regulation of the electricity market in Latvia have on the assessment of aid granted to electricity producers in the light of Article 107(1) [TFEU] (for the purposes of the answer to question 1), in particular, the situation prior to 2007?

(3) If the answers to questions 1 and 2 make clear that the aid granted to electricity producers does not constitute State aid within the meaning of Article 107(1) [TFEU], do the fact that the applicant now operates in a liberalised electricity market and the fact that the payment of compensation would now afford it an advantage over other operators present on the market concerned mean that compensation for the loss must be treated as State aid within the meaning of Article 107(1) [TFEU]?

(4) If the answers to questions 1 and 2 make clear that the aid granted to electricity producers is State aid within the meaning of Article 107(1) [TFEU], must it be considered, in the context of the supervision of State aid provided for in that provision, that the applicant's claim for compensation for the loss sustained due to failure to respect fully the statutory right to receive a higher payment for electricity generated constitutes a request for new State aid or a request for payment of the portion of State aid not previously received?

(5) If question 4 is answered to the effect that the claim for compensation must be assessed, in the context of past circumstances, as a request for payment of the portion of State aid not previously received, does it follow from Article 107(1) [TFEU] that, at the present time, in order to adjudicate on the payment of that State aid, it is necessary to examine the current market situation and to take account of the legislation in force (including the limitations currently in existence to prevent overcompensation)?

(6) Is it significant, for the purposes of the interpretation of Article 107(1) [TFEU], that wind power plants, unlike hydroelectric power plants, have benefitted in the past from the full amount of aid?

(7) Is it significant, for the purposes of the interpretation of Article 107(1) [TFEU], that only some of the hydroelectric power plants which have not received the full amount of aid should now receive compensation?

(8) Must Article 3(2) and Article 7(1) of [Regulation No 1407/2013] be interpreted as meaning that, since the amount of the aid at issue in the present case does not exceed the threshold for *de minimis* aid, that aid should be considered to fulfil the criteria laid down for *de minimis* aid? Must Article 5(2) of that regulation be interpreted as meaning that, in the present case, in view of the conditions for preventing overcompensation set out in Commission Decision SA.43140, the treatment of the payment of damages as *de minimis* aid is liable to create unacceptable cumulation?

(9) If the view is taken in the present case that State aid was granted/paid, must Article 1(b) and (c) of [Regulation 2015/1589] be interpreted as meaning that circumstances like those of the present case amount to new State aid and not existing State aid?

(10) If question 9 is answered in the affirmative, in order to assess whether the applicant's situation matches that of aid which is deemed to be existing aid, as referred to in Article 1(b)(iv) of Regulation 2015/1589, must account be taken solely of the date on which the aid was effectively paid as the starting point of the limitation period for the purposes of Article 17(2) of that regulation?

(11) If it is considered that State aid has been granted/paid, must Article 108(3) [TFEU] and Articles 2(1) and (3) of Regulation 2015/1589 be interpreted as meaning that a procedure to notify State aid like that at issue in the present case is deemed to be appropriate where the national court upholds the claim for compensation for the loss sustained on condition that a decision has been received from the Commission which approves the aid and directs the Ministry of the Economy to forward to the Commission, within two months of delivery of the judgment, the relevant declaration of aid for the business activity?

(12) Is it significant, for the purpose of interpreting Article 107(1) [TFEU], that compensation for the loss sustained is claimed from a public sector body (Regulatory Commission) which, historically, has not had to bear such costs, and also that that body's budget is made up of State charges paid by public service providers belonging to regulated sectors which must be ringfenced for regulatory activity?

(13) Is a compensation scheme like that at issue in the present case compatible with the principles contained in EU law and applicable to regulated sectors, in particular Article 12 and recital 30 of [Directive 2002/20]?'

22. Written observations were submitted by the regulatory authority, the Latvian, German and Netherlands Governments and the Commission. Those parties also responded in writing within the time prescribed to questions by the Court, pursuant to Article 61(1) of the Rules of Procedure of the Court of Justice. Those parties, together with the applicants and the Spanish Government, also presented oral argument at the hearing held, before the Grand Chamber, on 29 March 2022.

IV. Legal analysis

A. The first question referred for a preliminary ruling

23. By its first question, the referring court asks, in essence, whether a scheme which requires public operators to purchase the electricity produced from renewable energy sources at a price higher than the market price, by means of an obligation imposed on the end consumer to fund such payments, must be deemed to constitute an 'intervention by the State or through State resources' for the purposes of Article 107(1) TFEU.

24. It should be recalled that, in order to be categorised as 'State aid' within the meaning of that provision, four conditions must be satisfied, namely that there is an intervention by the State or through State resources, that the intervention is liable to affect trade between Member States, that it confers a selective advantage on the beneficiary and that it distorts or threatens to distort competition. [7]

25. The question put to the Court concerns only the first of those conditions, namely the existence of State resources. In that regard, it should be noted that, according to settled case-law, a measure can be categorised as intervention by the State or aid granted through State resources if two separate and cumulative conditions are satisfied: (1) the measure is imputable to a Member State and (2) the measure is granted directly or indirectly through State resources. [8]

26. With regard, in the first place, to the imputability condition, it is necessary to examine whether the Member State must be deemed to have been involved in the adoption of that measure. This condition is deemed to be satisfied where the measure at issue was introduced by law or regulation. [9] In that regard, it must be stated that the compensation mechanism at issue in the main proceedings was introduced by legislative means and must therefore be deemed imputable to the State, a fact which, moreover, has not been contested by any of the interested parties.

27. As regards, in the second place, the condition that the advantage must be granted through State resources, it is important to note that only advantages granted directly or indirectly through State resources are regarded as falling within the scope of Article 107(1) TFEU. [10]

28. I would observe from the outset that the written observations lodged by the Commission concerning that second criterion prompted a request by the German Government that the present cases be dealt with by the Grand Chamber, pursuant to the third paragraph of Article 16 of the Statute of the Court of Justice. In the German Government's view, the involvement of the Grand Chamber is justified by the fact that the questions relating to the criteria to be taken into account to establish the existence of 'State resources' has implications of principle for the interpretation of Article 107(1) TFEU. More specifically, that government considers that the fiscal nature of a measure does not, on its own, mean that the resources received are State resources, contrary to the position adopted by the Commission on this point. By contrast, in the Government's view, the fact that the resources received are actually at the disposal of public

7 Judgment of 13 September 2017, *ENEA* (C-329/15, EU:C:2017:671, paragraph 17 and the case-law cited).

8 See, to that effect, judgment of 16 May 2002, *France* v *Commission* (C-482/99, EU:C:2002:294, paragraph 24 and the case-law cited).

9 Judgment of 28 March 2019, *Germany* v *Commission* (C-405/16 P, EU:C:2019:268, paragraph 49 and the case-law cited) ('*Germany* v *Commission*').

10 Judgment of 16 May 2002, *France* v *Commission* (C-482/99, EU:C:2002:294, paragraph 24).

bodies or bodies under State control is the decisive factor. If assessed in the round, a measure's fiscal nature is just one indication of the existence of public control and a power of disposal over the resources received.

29. Before taking a view on that matter, it is necessary to establish whether the measure at issue in the cases in the main proceedings involves State resources.

1. Assessment of the Latvian scheme at issue in the light of the Court's case-law

30. I would point out first of all that there is a wealth of case-law regarding the measures to support renewable energies adopted by the majority of Member States. That case-law provides some useful guidance with a view to answering the first question referred for a preliminary ruling.

31. It is thus clear from the Court's case-law that a measure consisting in an obligation to purchase energy can come under the concept of 'aid', even though it does not involve a transfer of State resources.[11] Article 107(1) TFEU in fact covers all the financial means by which public authorities may actually support undertakings, irrespective of whether or not those means are permanent assets of the public sector. Accordingly, even if the sums corresponding to the aid measure in question are not permanently held by the Treasury, the fact that they constantly remain under public control, and therefore at the disposal of the competent national authorities, is sufficient for them to be classified as 'State resources'.[12]

32. The Court has also held that funds financed through compulsory charges imposed by State legislation, managed and apportioned in accordance with that legislation, may be regarded as State resources within the meaning of Article 107(1) TFEU even if they are managed by entities separate from the public authorities.[13] The decisive factor in that regard is the fact that such entities are appointed by the State to manage a State resource, and not just bound by an obligation to purchase by means of their own financial resources.[14] In that connection, there must be a link between, on the one hand, the advantage at issue and, on the other hand, a reduction – or at the very least a potential reduction – of the State budget.[15] That link exists in any case where the legislature requires end consumers to pay, according to an objective criterion (for example, energy consumption), a charge to the public authority. Such a charge is in fact akin to a levy. This is likewise the case if the charge is collected by an entity other than the public authority, such as a network manager.[16]

33. The Court has relied inter alia on the factors set out above in order to find that the measures concerned in a number of cases presenting similarities with the cases in the main proceedings should be regarded as involving State resources.[17]

11 Judgment of 13 September 2017, *ENEA* (C-329/15, EU:C:2017:671, paragraph 24 and the case-law cited).

12 Judgment of 13 September 2017, *ENEA* (C-329/15, EU:C:2017:671, paragraph 25 and the case-law cited).

13 Judgments of 2 July 1974, *Italy* v *Commission* (173/73, EU:C:1974:71, paragraph 35), and of 19 December 2013, *Association Vent De Colère! and Others* (C-262/12, EU:C:2013:851, paragraph 25).

14 Judgment of 19 December 2013, *Association Vent De Colère! and Others* (C-262/12, EU:C:2013:851, paragraphs 30 and 35 and the case-law cited).

15 *Germany* v *Commission* (paragraphs 60 and 84 and the case-law cited).

16 Judgments of 17 July 2008, *Essent Netwerk Noord and Others* (C-206/06, EU:C:2008:413, paragraphs 45 to 47 and 66) ('*Essent Netwerk Noord and Others*'), and *Germany* v *Commission* (paragraphs 65 to 71).

17 *Essent Netwerk Noord and Others*; See also judgments of 19 December 2013, *Association Vent De Colère! and Others* (C-262/12, EU:C:2013:851); and of 15 May 2019, *Achema and Others* (C-706/17, EU:C:2019:407).

34. In addition to the cases in which the Court has held that there was State control over the resources in question, consideration must likewise be given to the circumstances in which the Court has held that no such control exists.

35. Thus, in the judgment in *PreussenElektra*, the Court found that State resources are not involved in measures by which the State merely fixes a minimum or maximum price for the purchase or sale of particular goods or of a particular service.[18] It follows that the State neither controls nor disposes of funds where the legislature regulates prices and determines, as the case may be, how the financial burden occasioned by that price is shared between the private entities concerned, without otherwise being involved in the management or allocation of the funds. In those cases, the private entities manage their own financial resources and not State resources.

36. Furthermore, the presence of State resources is not established where a surcharge provided for by law in respect of a predefined category of persons (namely consumers) is not compulsory. The Court thus found in the judgment in *Germany* v *Commission* that, for State resources to be involved, a surcharge must be compulsory *de jure*, meaning that its compulsory nature must stem from national law.[19] Therefore, if national legislation simply 'allows' a surcharge to be passed on to a specific category of persons, a 'compulsory surcharge' is not imposed on that category of persons and, accordingly, the resources derived from such a surcharge do not become State resources.

37. It is now necessary to analyse the Latvian measure at issue in the light of the foregoing.

38. I note, in the first place, that the scheme established by the Latvian Government involved a compulsory surcharge that was imposed on all end consumers unilaterally by the legislature by means of a legally binding act, such that it may be equated with a levy.[20]

39. It should be pointed out, in the second place, that the sums collected from end consumers and used to purchase electricity produced from renewable sources were managed by a body under public control, namely the company Latvenergo, which is 100% State owned. That company managed the monies that it received and distributed them amongst the renewable energy distributors in accordance with the criteria laid down by Latvian law. The fact that Latvenergo had no discretion in the use of the monies received (which must be used solely for the purposes specified by that scheme) in no way detracts from the fact that it is the public authorities which take all the decisions in that regard.[21]

40. It must thus be observed that, throughout the distribution lifecycle of the monies concerned, that is to say from their collection from final electricity consumers to their distribution between the undertakings concerned, those monies were constantly under public control within a strictly regulated framework.

41. I would also point out that, in the light of those characteristics, the Latvian scheme differs from the schemes in question in the cases that gave rise to the judgments in *PreussenElektra* and *Germany* v *Commission*. For instance, under the scheme at issue in the main proceedings, the purchase-related charges are covered by a legally binding act, namely a compulsory surcharge imposed by law, unlike the surcharge at issue in *Germany* v *Commission*. Moreover, unlike the

18 Judgment of 13 March 2001, *PreussenElektra* (C-379/98, EU:C:2001:160, paragraphs 58 and 59) ('*PreussenElektra*').

19 *Germany* v *Commission* (paragraphs 70 and 71).

20 See point 32 of this Opinion.

21 See, to that effect, *Essent Netwerk Noord and Others* (paragraphs 69 and 70).

scheme at issue in *PreussenElektra*, which provided that the financing of support measures for renewable energies was exclusively derived from private sources, the funds used in the Latvian scheme to compensate for expenses related to the purchase of electricity from renewable sources at a higher price fixed by the State, were collected from end consumers. It should also be recalled that the purchasing obligation under the Latvian scheme is imposed on a specific – and wholly public – operator, and not on private entities.

42. In the light of the foregoing, I am of the view that, the approach taken vis-à-vis the issue raised by the German Government notwithstanding, the Latvian scheme involves 'State resources' within the meaning of Article 107(1) TFEU. First, as I have explained in point 38 of this Opinion, the scheme is funded by a compulsory surcharge which is equates to a levy. Second, as I have set out in points 39 and 40 of this Opinion, the resources involved in the financing of the scheme are collected, managed and distributed by a company that is entirely State owned and are therefore at all times under State control.

2. View on the issue raised by the German Government

43. The issue raised by the German Government is testament to the complexity involved in interpreting the concept of 'State resources', particularly in the field of renewable energies. Thus, the challenge for the Court is to strike a balance between, on the one hand, the 'risk of under-inclusion', which would result in EU law accepting the creation of complex schemes that enable the rules on State aid to be circumvented and, on the other hand, the 'risk of over-inclusion', which would see measures to support renewable energies that do not involve the use of State resources being categorised as State aid.

44. It is in that context that the Court has dealt with a series of cases concerning schemes to support renewable energies implemented by Member States. The decisive factor that emerges from that case-law is that, in order to establish the existence of State resources, the funds involved must be constantly under public control and actually at the State's disposal. In other words, the existence of State resources will be dependent on the degree of control exercised by the State over the funds involved.

45. On that basis, application of the State aid rules may be excluded, in the first place, where the State has no control over the funds concerned. That will be the case, for example, where a scheme to support renewable energies provides that monies from private sources are distributed between undertakings without those monies being made available to the State, as in the case that gave rise to the judgment in *PreussenElektra*.

46. In the second place, it follows from the case-law recalled in points 31 and 32 of this Opinion that the condition of control over State resources is deemed to be met in two situations: first, where the measure in question concerns funds financed by a levy or by other compulsory surcharges such as contributions or charges that benefit the State budget and may thus be equated with a levy and, second, where national legislation requires the payment of a contribution and the resulting monies are managed and disbursed by the State itself or by an entity acting on behalf and under the control of the State.

47. Are those two conditions cumulative? That is, in essence, the issue raised by the German Government. In my view, the answer to that question must be 'no'.

48. I take the view that the Court's case-law must be interpreted as meaning that, where funds are financed by a levy or by other surcharges, contributions or charges imposed on all end consumers unilaterally by the legislature by means of a legally binding act may thus be equated with a levy, such resources are always State resources – which is quite clearly inherent in the concept of a 'levy' – such that the condition relating to the State's control of the funds and their placement at the State's disposal is deemed to be met. Furthermore, that view appears to me to be confirmed by the Court's case-law. [22]

49. However, that condition is not the only one on the basis of which a measure may be categorised as involving State resources. For instance, the existence of State resources may also be demonstrated via the second criterion, by which it may be established that the resources collected pursuant to a legislative act are in fact under State control. [23]

50. I am, moreover, of the view that the fact that, in some cases, the Court decided to analyse that second criterion even though it had previously concluded that the case concerned a levy should not be interpreted as an implicit recognition of the cumulative nature of those two conditions, as the German Government argues. I note, in that regard, that the analysis that the Court was asked to conduct, particularly in the cases cited above, concerned measures that varied significantly in terms of both their legal and their economic complexity. It follows that an analysis 'of all the circumstances' of a specific measure – in the words used by the Court in the judgment in *Essent Netwerk Noord and Others* – may prove necessary in situations in which the fiscal nature of the measure at issue cannot be clearly and unequivocally identified. Furthermore, such an analysis will quite clearly be needed where the measure at issue is not a levy or a compulsory surcharge that can be equated with a levy.

51. I would also observe that the alternative nature of those two 'conditions' is likewise confirmed by the Court's case-law. Thus, in my reading of the judgment in *Germany* v *Commission*, [24] it was because the EEG surcharge at issue in that judgment did not have the same characteristics as the electricity price surcharge examined by the Court in the judgment in *Essent Netwerk Noord and Others* (that is to say, the characteristics of a levy) that the Court of Justice considered itself bound to consider the other factors accepted by the General Court in the judgment under appeal as indicating that the resources were of State origin. [25] In addition, in the judgment in *Achema and Others*, [26] the Court stated that monies collected compulsorily by the electricity network managers from economic operators and end consumers may be regarded as State resources (paragraphs 64 and 65 of that judgment), and went on to hold, 'moreover', that those monies, apportioned between the beneficiaries of the scheme by a body under public control, which has no discretion as to the determination and intended use of those funds, must be regarded as remaining under public control (paragraphs 66 and 67 of the judgment).

[22] See *Essent Netwerk Noord and Others* (paragraphs 69 to 75); and also judgments of 19 December 2013, *Association Vent De Colère! and Others* (C-262/12, EU:C:2013:851, paragraphs 21, 25 and 28 to 36); of 15 May 2019, *Achema and Others* (C-706/17, EU:C:2019:407, paragraphs 63 to 67); and of 16 September 2021, *FVE Holýšov I and Others* v *Commission* (C-850/19 P, not published, EU:C:2021:740, paragraph 46).

[23] For that condition to be deemed satisfied, it must be shown that the monies are collected and managed by an undertaking that is under State control.

[24] See paragraphs 65 to 72 of that judgment. See also, to that effect, judgment of 16 September 2021, *FVE Holýšov and Others* (C-850/19 P, EU:C:2021:740, paragraph 46).

[25] Thus, in paragraph 72 of the judgment in *Germany* v *Commission*, only after ruling out the existence of a 'special levy' did the Court take the view that, 'consequently', it was necessary to determine whether the two other factors mentioned (namely, State control over the funds or over the network managers) allowed it 'nonetheless' to conclude that the funds generated by the 'EEA' surcharge constituted State resources.

[26] Judgment of 15 May 2019 (C-706/17, EU:C:2019:407).

3. Answer to the question referred for a preliminary ruling

52. In the light of the foregoing, the first question referred for a preliminary ruling should be answered to the effect that the obligation under which the public operator is required to purchase electricity from producers who use renewable energy sources at a price higher than the market price, relying on the obligation under which the end consumer must pay a price in proportion to use, must be regarded as aid granted through State resources within the meaning of Article 107(1) TFEU.

B. The second question referred for a preliminary ruling

53. By its second question, the referring court asks, in essence, how to determine the date of the liberalisation of the market in electricity in Latvia and the extent to which the situation on that market prior to 2007 has an impact on the assessment of the existence of State aid within the meaning of Article 107(1) TFEU.

54. In the Latvian Government's view, that question should be declared inadmissible by the Court because it can have no bearing on the outcome of the dispute in the main proceedings in so far as the compensation claimed by the applicants satisfies the criteria to be 'State aid', regardless of the timing of the liberalisation of the market in electricity.

55. Whilst it is for the referring court, which alone has jurisdiction to establish and assess the facts of the dispute in the main proceedings, to rule on this question, it appears to me that, by that question, that court is asking about the possibility of State aid existing on a market that is not liberalised. The question could arise whether, in the absence of liberalisation of the market in electricity, some of the conditions laid down in Article 107(1) TFEU may not be met. I note, in that regard, that categorisation as 'State aid' presupposes the satisfaction of four conditions, including those requiring that the aid should 'distort competition' and 'affect trade between Member States'.

56. It should be observed, first, that the Court has already held that an advantage granted to certain undertakings, for example in the form of subsidies, is liable to affect trade between Member States and to distort competition, even before the complete liberalisation of the market in the sector concerned.[27] Second, the Court has stated that it is for the national court to assess whether the market is open to competition.[28] The referring court appears to have answered that question in the affirmative by stating that the Latvian market in electricity was already liberalised (and connected to other Member States' electricity markets) prior to 1 July 2007 and, therefore, before the time of the facts of the disputes in the main proceedings.

57. In those circumstances, I consider that the second question should be declared inadmissible by the Court since it appears to be hypothetical and to have no bearing on the outcome of the disputes in the main proceedings. I recall, in that regard, that the Court has held that it has no jurisdiction to provide an answer to the referring court where the questions submitted to it bear no relation to the facts or the subject matter of the main action and are therefore not objectively required in order to settle the dispute in that action.[29]

[27] Judgment of 10 June 2010, *Fallimento Traghetti del Mediterraneo* (C-140/09, EU:C:2010:335, paragraph 49).

[28] Judgment of 10 June 2010, *Fallimento Traghetti del Mediterraneo* (C-140/09, EU:C:2010:335, paragraph 50).

[29] Judgment of 17 May 1994, *Corsica Ferries* (C-18/93, EU:C:1994:195, paragraph 14).

C. The third question referred for a preliminary ruling

58. In the light of the answer that I propose be given to the first question referred for a preliminary ruling, I consider there to be no need to answer the third question. If the Court takes the view that that question must be answered, I refer to the following analysis concerning the fourth question referred for a preliminary ruling.

D. The fourth and ninth questions referred for a preliminary ruling

59. By its fourth question, the referring court asks, in essence, whether, if the measure at issue should be categorised as 'State aid', granting the claim for compensation would constitute new aid or should treated as the payment of a portion of the State aid not previously received. By its ninth question, that court asks whether State aid granted by way of such compensation must be categorised as 'new aid' or 'existing aid' within the meaning of Article 1(b) and (c) of Regulation 2015/1589. Given the connection between those two questions, it is my view that they must be examined together.

1. The impact of the characterisation of the applicants' claims for compensation in the light of the provisions on State aid

60. It should be observed, in the first place, that the parties to the main proceedings have raised the question whether the finding that State aid exists can depend upon the classification of the applications made pursuant to national law.

61. In that regard, the applicants and the Netherlands Government take the view that the referring court, in the disputes in the main proceedings, is required to rule on a claim for compensation based on the liability in tort of the regulatory authority. The loss in respect of which compensation is sought indeed stems from an error made by that regulator, a fact which has moreover been established by a national court. Thus, relying on the case-law established in the judgment of 27 September 1988, in *Asteris and Others* (106/87 à 120/87, EU:C:1988:457) set out in point 63 of this Opinion, the applicants submit that the fact that the action initiated is an action for damages is in itself sufficient to rule out the existence of State aid.

62. Conversely, the Latvian Government contends that the compensation claimed by the applicants corresponds not to an action for damages based on loss or harm caused by a State intervention – notwithstanding the classification of that action as such by national law – but rather to the grant of an advantage provided for in Article 30(3) of the Law on the Electricity Market. [30]

63. It should be noted, in the second place, that the Court has already ruled on a similar question in the judgment in *Asteris and Others*, holding that State aid is fundamentally different in its legal nature from damages which the national authorities are ordered to pay to individuals in compensation for the damage they have caused to those individuals. [31] Thus, by paying compensation, the State seeks to restore the financial position that would have prevailed if it had not made that situation worse through its intervention. There can be no doubt that certain forms

[30] That provision provided for the right to sell the surplus electricity to the public operator at a price equal to twice the average electricity sale price, which was higher than that set over the period concerned.

[31] Judgment of 27 September 1988 (106/87 to 120/87, EU:C:1988:457, paragraph 23).

of compensation granted to undertakings do not constitute State aid. By contrast, the objective of State aid, within the meaning of Article 107(1) TFEU, is to afford certain undertakings an advantage that improves their existing financial situation and their position on the market as compared with other competitors.

64. Nevertheless, such actions for compensation cannot lead to the effective application of the rules on State aid being circumvented.[32] Persons who did not receive aid that was not notified to the Commission and not authorised by it cannot claim in the form of 'damages' the equivalent of the amount of the aid not received, since this would amount to an indirect grant of unlawful aid.[33]

65. I note, in the third place, that the fact that the payment of a sum is the result of a judicial decision does not preclude, in itself, its potential categorisation as 'State aid'. Thus, in the judgment in *Buonotourist* v *Commission*, the Court held that Italy had granted State aid by means of a judgment of the Consiglio di Stato (Council of State, Italy), which had awarded compensation in respect of public service obligations to a provider of bus transport services.[34] Similarly, in the judgment in *DEI and Commission* v *Alouminion tis Ellados*, the Court held that Greece had granted State aid by means of an interim order of the Protodikeio Athinon (Court of First Instance, Athens, Greece) which had re-established over a period of several months a preferential tariff for the supply of electricity in favour of an aluminium producer.[35]

66. It is true that, from a purely theoretical perspective, the view that State aid can be granted by a national court is at odds with the separation of powers principle. A judicial decision does not create (in itself) new rights that did not previously exist, rather it simply interprets and applies existing rules of law. However, that fundamental position cannot be applied fully in the field of State aid, in particular in the light of the fact that it is of no consequence in that field which State body grants State aid (including in the case of a court).

67. For the following reasons, it is my view that a judicial decision upholding the claims made by the applicants may constitute 'State aid' and that the classification of those applications as actions for damages, pursuant to national law, is irrelevant.

68. That fact stems, in my view, first of all, both from the judgment in *Buonotourist* v *Commission*, cited in point 65 of this Opinion, and from settled case-law of the Court that State aid measures are defined objectively by their effects and not by their causes or their objectives.[36] In addition, automatically ruling out the existence of State aid where a decision 'formally' concerns a claim for compensation would mean that the concept of State aid would not be defined objectively in relation to its effects but rather subjectively according to the public authority which adopted it.

69. Next, the use of a formal criterion based solely in national law to identify which actions may give rise to the grant of State aid would, in my view, present a genuine risk of circumvention of the provisions of EU law on State aid. An application for unlawful State aid would simply have to be formulated as a claim for compensation in order to evade the rules on State aid and escape the control both of the Commission and of the national courts. In addition, it is quite clear that such a solution would undermine the practical effect of Article 108(3) TFEU.

[32] Judgment of 11 November 2015, *Klausner Holz Niedersachsen* (C-505/14, EU:C:2015:742, paragraphs 42 to 44).

[33] Opinion of Advocate General Ruiz-Jarabo Colomer in *Atzeni and Others* (C-346/03 and C-529/03, EU:C:2005:256, point 198).

[34] Judgment of 4 March 2020 (C-586/18 P, EU:C:2020:152, paragraphs 88 to 97).

[35] Judgment of 26 October 2016 (C-590/14 P, EU:C:2016:797, paragraphs 58 and 59).

[36] Judgment of 8 December 2011, *France Télécom* v *Commission* (C-81/10 P, EU:C:2011:811, paragraph 17).

70. Finally, in my opinion, the present cases illustrate that risk quite markedly, since it appears that – on the basis of the determinations which are for the referring court to undertake – the actions for compensation lead to the same outcome as the application of the law providing for the purchase of the electricity at a higher price, which constitutes State aid (as I found in response to the first question referred for a preliminary ruling). Thus, through the actions for compensation initiated, the applicants are asking a national court to grant them State aid which they could not have received previously in accordance with the law. The fact that the applicants' claims are characterised as claims for compensation under national law in no way changes that finding. Accordingly, the compensation claimed by the applicants can be regarded as 'State aid' within the meaning of Article 107(1) TFEU.

2. The characterisation of the claims for compensation as 'new' or 'existing' aid

71. I consider that the answer to the question whether 'new aid' or 'existing aid' is at issue here may be determined without great difficulty by reading Regulation 2015/1589.

72. I would point out, in that regard, that Article 1(c) of that regulation provides that 'new aid' means all aid, that is to say, aid schemes and individual aid, which is not existing aid, including alterations to existing aid. Thus, from the time when the compensation granted to the applicants does not fall within any category of 'existing aid' laid down in point (b) of that article, that compensation constitutes 'new aid'. In particular, the State aid sought by the applicants is clearly not covered by points (ii) and (iii) of that provision since the aid has not been authorised by the Commission or the Council or notified to the Commission.

73. In the light of the foregoing, I propose that the fourth and ninth questions referred for a preliminary ruling are answered to the effect that a decision by which the national court grants compensation to the applicants can constitute 'State aid', within the meaning of Article 107(1) TFEU, and must be categorised as 'new aid', within the meaning of Article 1(c) of Regulation 2015/1589, because it does not fall within any of the categories of 'existing aid' laid down in Article 1(b) of that regulation.

E. The fifth question referred for a preliminary ruling

74. By its fifth question, the referring court asks, in essence, whether, if the claims for compensation at issue in the cases in the main proceedings must be regarded as claims for payment of State aid not previously received, that payment should be dependent on the current situation on the electricity market and the national legislation in force, including current limitations concerning overcompensation.

75. In view of the answer that I propose be given to the fourth question, I consider there to be no need to answer the fifth question.

76. In any event, it is my view that that question is inadmissible since it appears to relate to the assessment of the compatibility of the payment of the compensation at issue with the internal market in electricity, assuming that that compensation is regarded as State aid granted on the basis of the State aid scheme in force between 2005 and 2008. I would point out, in this regard, that it follows from settled case-law that the assessment of the compatibility of aid measures or of an aid scheme with the internal market falls within the exclusive competence of the

Commission, subject to review by the Courts of the European Union.[37]

F. The sixth and seventh questions referred for a preliminary ruling

77. By its sixth and seventh questions, the referring court asks, in essence, whether, first, the fact that wind power plants, unlike hydroelectric power plants, have benefited in the past from a full amount of aid and whether, second, the fact that only some of the producers of hydroelectricity receive compensation are relevant to the interpretation of Article 107(1) TFEU.

78. Like the Commission and the Latvian Government, I am of the view that those circumstances have no bearing on the resolution of the disputes in the main proceedings. Those facts may constitute assessment criteria for the compatibility of the aid scheme in force between 2005 and 2008 with the internal market, which, as I have made clear in point 76 of this Opinion, falls within the exclusive competence of the Commission. Accordingly, it is my view that these questions must be rejected as inadmissible.

G. The eighth question referred for a preliminary ruling

79. By its eighth question, the referring court asks, in essence, whether the criteria laid down for *de minimis* aid apply to the aid at issue in the present cases since the amount of that aid does not exceed the *de minimis* threshold set in Article 3(2) of Regulation No 1407/2013.[38]

80. It should be recalled that Article 5(2) of that regulation provides that the ceiling of *de minimis* aid must be assessed having regard to the aid already received by the applicants on the same basis in the same legislation over the same period.

81. I would also point out that, although the national courts do not have jurisdiction to rule on the compatibility of State aid with the internal market, proceedings may, however, be brought before them requiring them to interpret and apply the concept of aid, as laid down in Article 107(1) TFEU, in particular in order to determine whether or not a State measure introduced without observance of the preliminary examination procedure provided for in Article 108(3) TFEU should have been subject to that procedure.[39]

82. Thus, the referring court may be called upon to assess whether State aid is covered by the derogations applicable to *de minimis* aid. It therefore falls to that court to examine, in each of the case in the main proceedings, whether the aid at issue is not cumulated with other State aid already received by the applicants in accordance with the Law on the Electricity Market or under other aid schemes authorised by the Commission.[40]

[37] Judgment of 23 March 2006, *Enirisorse* (C-237/04, EU:C:2006:197, paragraph 23).

[38] The reasoning behind this question appears to be that each of the amounts obtained by the applicants is in fact below the *de minimis* threshold.

[39] Judgment of 26 October 2016, *DEI and Commission* v *Alouminion tis Ellados* (C-590/14 P, EU:C:2016:797, paragraph 98 and the case-law cited).

[40] I note, in this regard, that the referring court and some of the parties to the proceedings refer to the State aid scheme that was in force concurrently with the measure at issue in the main proceedings and which was approved by Commission Decision SA.43140 (2015/NN) of 24 April 2017 – Support to renewable energy and CHP.

83. In the light of the foregoing, the eighth question referred for a preliminary ruling should be answered to the effect that it is for the referring court to determine, in accordance with Article 5(2) of Regulation No 1407/2013, whether a cumulation of the aid at issue in each of the cases in the main proceedings with other aid received by the same applicants does not mean that the threshold set in Article 3(2) of that regulation is exceeded.

H. The tenth question referred for a preliminary ruling

84. By its tenth question, the referring court seeks to ascertain the starting point of the 10-year limitation period provided for in Article 17(2) of Regulation 2015/1589.

85. Like the Latvian Government, I do not consider it necessary to answer that question since it is based on the assumption that the grant of the compensation at issue is treated as existing aid, whereas that compensation must be regarded as 'new aid'.

86. In any case, it should be observed that the Court has already held that the date on which the unlawful aid is actually granted to its beneficiary is the starting point for the limitation period,[41] whilst clarifying that the date on which aid is granted is not the date on which the aid scheme was adopted.[42] I would also point out, in that regard, that, in the judgment of 25 January 2022, *Commission* v *European Food and Others* (C-638/19 P, EU:C:2022:50) (in the case known by the name 'Micula'), the Court, sitting in Grand Chamber formation, made clear that the timing of the grant of any aid was not when the applicant obtained the material right to seek compensation from the State on account of an alleged breach but when that right was afforded and quantified in an order of the arbitral tribunal. It is not until that precise moment that the applicant can obtain the actual payment of the compensation sought, acquiring a definitive right to receive that aid, and that the State is obliged to grant that aid. It is also as at that date that the measure was liable to distort competition and affect trade between Member States within the meaning of Article 107(1) TFEU.[43]

87. It should nevertheless be pointed out that, in the present cases, the judgments of the Administratīvā apgabaltiesa (Regional Administrative Court) provided for their execution to be suspended pending the notification of the aid granted by them and the subsequent decision of the Commission concerning that aid. Accordingly, the actual grant of the aid, that is to say, the payment of the compensation, has not yet taken place and the limitation period provided for in Article 17(2) of Regulation 2015/1589 has not started to run.

88. In the light of the answer given to the fourth and ninth questions referred for a preliminary ruling, the tenth question referred for a preliminary ruling should be answered to the effect that, in view of the characterisation of the action for damages as 'new aid', the conditions laid down in Article 1(b)(iv) of Regulation 2015/1589 are not met because the 10-year limitation period from the grant of the aid has not expired. That period begins to run from the date on which the judgment that granted the claim for compensation takes effect, and that date is the day on which the aid is awarded to the beneficiary within the meaning of Article 17(2) of that regulation.

41 Judgment of 26 April 2018, *ANGED* (C-233/16, EU:C:2018:280, paragraphs 79 and 82).

42 Judgment of 8 December 2011, *France Télécom* v *Commission* (C-81/10 P, EU:C:2011:811, paragraph 81).

43 Judgment of 25 January 2022, *Commission* v *European Food and Others* (C-638/19 P, EU:C:2022:50, paragraphs 123 to 125).

I. The eleventh question referred for a preliminary ruling

89. By its eleventh question, the referring court asks, in essence, whether, in the light of Article 108(3) TFEU and of Articles 2 and 3 of Regulation 2015/1589, it can uphold the claim for compensation only on the condition precedent that it is notified beforehand to the Commission and that the Commission authorises it.

90. I would point out, at the outset, that the role assigned by EU law to the national courts in the implementation of the State aid control system [44] includes inter alia the obligation, if those courts find that the measure concerned should have been notified to the Commission in accordance with Article 108(3) TFEU, to verify whether the Member State concerned complied with that obligation and, if that is not the case, to declare that measure unlawful. [45] It follows that a national court is required to draw all the necessary inferences, in accordance with its national law, from a breach of the rules on State aid and, more specifically, from infringement of Article 108(3) TFEU.

91. It therefore follows from the case-law cited above that the referring court cannot uphold the producers' claims for compensation, since those claims are based on unlawful aid. As I have explained in point 70 of this Opinion, the right to compensation would de facto have the same effect as the application of legislation contrary to EU law, which cause competition to be distorted. The producers would in fact receive an amount equivalent to that which they would have received under the unlawful aid scheme, which the national court must, as a matter of principle, prevent.

92. I would point out, furthermore, that within the context of the division of competences between the Commission and the national courts, the national courts assess the existence of aid but not its compatibility with the internal market, as that latter assessment falls within the exclusive competence of the Commission, subject to review by the Court. [46]

93. In addition, in the present cases, the Administratīvā apgabaltiesa (Regional Administrative Court) made the award of compensation subject to a condition precedent, pursuant to which the Latvian authorities do not have to pay aid unless they have notified it and obtained the Commission's prior authorisation. Thus, by stating in its judgments of 31 May and 10 July 2019 that the compensation that it has ordered the national authorities to pay to the applicants cannot be paid until the Commission has given its approval or is deemed to have done so, the Administratīvā apgabaltiesa (Regional Administrative Court) complied with the requirements laid down in Article 108(3) TFEU.

94. I therefore consider that the eleventh question should be answered to the effect that Article 108(3) TFEU and Articles 2 and 3 of Regulation 2015/1589 must be interpreted as authorising the grant of State aid where a national court upholds a claim for compensation, provided that the Member State concerned notifies the aid in question to the Commission and receives a decision from the Commission authorising that aid measure.

44 Judgment of 26 October 2016, *DEI and Commission* v *Alouminion tis Ellados* (C-590/14 P, EU:C:2016:797, paragraphs 95 to 98 and the case-law cited).

45 Judgment of 19 March 2015, *OTP Bank* (C-672/13, EU:C:2015:185, paragraph 68).

46 Judgment of 2 May 2019, *A-Fonds* (C-598/17, EU:C:2019:352, paragraphs 45 and 46).

J. The twelfth question referred for a preliminary ruling

95. By its twelfth question, the referring court asks, in essence, whether it is relevant to the assessment of the existence of State aid that the compensation is claimed from a public authority that is separate from that which is, in principle, required to purchase the 'green' electricity from the producers and which has a budget that is dedicated solely to ensuring the authority's own functioning.

96. In other words, this question effectively asks whether the legal status and the tasks assigned to the legal person bound to pay a financial advantage are relevant to assessing whether that advantage is granted through 'State resources'. That question appears to arise from the particular features of the present cases and, in particular, from the specific nature of the national law which, in those cases, entrusted the setting of the increased electricity price to a separate person from the person empowered to purchase the 'green' electricity at that price.[47] In addition, in accordance with national law, the regulatory authority could not, in principle, use its own budget to make State aid payments in view of the restrictions imposed by national law, which allow that authority to use its funds solely to guarantee its own functioning.

97. It follows from Article 107(1) TFEU that, when assessing aid, the EU legislature attached weight not to the body responsible for the payment of the State aid, but rather to the origin of the funds from which the aid in question will be paid. Furthermore, it is clear from case-law that neither the public/private status nor the autonomy of the person tasked with allocating the advantage in question is a relevant factor in ruling on this point.[48]

98. In the light of the foregoing, the twelfth question referred for a preliminary ruling should be answered to the effect that the legal status assigned and the tasks entrusted to a legal person under national law are irrelevant to assessing whether an advantage is granted through 'State resources', since the specific source of the State resources does not affect the categorisation of the measure as State aid.

K. The thirteenth question referred for a preliminary ruling

99. By its thirteenth question referred for a preliminary ruling, the referring court asks, in essence, whether Directive 2002/20 can preclude any award of compensation to the applicants.

100. However, it must be stated that the present cases do not fall within the scope of that directive, since the Directive does not apply to the electricity sector. Furthermore, it is not apparent from any of its provisions that the Directive applies in areas other than the market in electronic communications. This question must therefore be rejected as manifestly inadmissible.

[47] I note, in this regard, that, under national law, it was the task of the company Latvenergo to purchase the surplus electricity produced at the increased price, whereas the average electricity sale price was set by the regulatory commission in its capacity as the regulatory authority for the market in electricity.

[48] Judgment of 9 November 2017, *Commission* v *TV2/Danmark* (C-656/15 P, EU:C:2017:836, paragraphs 44 and 45).

V. Conclusion

101. In the light of the foregoing considerations, I propose that the Court answer the questions referred for a preliminary ruling by the Augstākā tiesa (Senāts) (Supreme Court, Latvia) as follows:

(1) The obligation under which the public operator is required to purchase electricity from producers who use renewable energy sources at a price higher than the market price, relying on the obligation under which the end consumer must pay a price in proportion to use, must be regarded as aid granted through State resources within the meaning of Article 107(1) TFEU.

(2) A decision by which the national court grants compensation can constitute 'State aid', within the meaning of Article 107(1) TFEU, and must be categorised as 'new aid', within the meaning of Article 1(c) of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union , because it does not fall within any of the categories of 'existing aid' laid down in Article 1(b) of that regulation.

(3) It is for the referring court to determine, in accordance with Article 5(2) of Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid, whether a cumulation of the aid at issue in each of the cases in the main proceedings with other aid received does not mean that the threshold set in Article 3(2) of that regulation is exceeded.

(4) In view of the characterisation of the action for damages as 'new aid', the conditions laid down in Article 1(b)(iv) of Regulation 2015/1589 are not met because the 10-year limitation period from the grant of the aid has not expired. That period begins to run from the date on which the judgment that granted the claim for compensation takes effect, and that date is the day on which the aid is awarded to the beneficiary within the meaning of Article 17(2) of that regulation.

(5) Article 108(3) TFEU and Articles 2 and 3 of Regulation 2015/1589 must be interpreted as authorising the grant of State aid where a national court upholds a claim for compensation, provided that the Member State concerned notifies the aid in question to the European Commission and receives a decision from the Commission authorising that aid measure.

(6) The legal status assigned and the tasks entrusted to a legal person under national law are irrelevant to assessing whether an advantage is granted through 'State resources', since the specific source of the State resources does not affect the categorisation of the measure as State aid.