



EUROPEAN COMMISSION

PRESS RELEASE

Brussels, 2 May 2013

State aid: Commission reopens inquiry into the tax aid awarded to EDF following Court judgment

The European Commission has reopened an inquiry into certain tax measures for Electricité de France (EDF) related to the electricity grid. This follows a judgment handed down by the Court of Justice of the European Union (Case [C-124/10 P](#)) in June 2012 upholding the annulment of the Commission's initial decision (see [IP/03/1737](#)). The Court confirmed that the Commission should have checked whether a prudent private investor would have acted in the same way as the French authorities. As a result, the Commission has reopened the inquiry and extended its scope in order to cover this aspect. Opening an inquiry does not in any way prejudice the final outcome, it simply gives interested parties the opportunity to submit their observations.

As the concession holder for the high-voltage transmission network in France, EDF created accounting reserves between 1987 and 1996 with a view to renovating the grid. In 1997, when EDF's balance sheet was restructured, the French authorities reclassified the part of these provisions as a capital contribution without subjecting them to corporation tax.

Following an in-depth examination, the Commission decided that the non-payment of corporation tax on these provisions had conferred a selective advantage on EDF and amounted to state aid that was incompatible with the internal market (see [IP/03/1737](#)). The Commission also ordered France to recover this aid, estimated at EUR 888.89 million, with interest.

In its judgment of December 2009 (Case [T-156/04](#)), the General Court of the European Union annulled this decision on the grounds that, when examining the French authorities' reclassification of the provisions as a capital contribution, the Commission had not checked whether a private investor would have invested a comparable amount under similar circumstances. This judgment was confirmed by the Court of Justice of the European Union in June 2012 (Case [C-124/10 P](#)).

It is now for the Commission to reopen and carry out its inquiry into this matter with a view to reaching a decision in accordance with the criteria set out by the EU Courts. The Commission will check the economic reasoning and the expected profitability at the time of reclassifying the provisions in the light of what a private investor would have done with the same company under similar circumstances. This means extending the scope of the inquiry to allow the French authorities or any interested third parties to submit their observations on the question of whether the non-payment of tax could in fact represent an investment, and, if so, whether a prudent private investor would have made a comparable investment.

Background

The non-confidential version of today's decision will be made available under case number [SA 13869](#) in the [State Aid Register](#) on the [DG Competition website](#) once any confidentiality issues have been resolved. New publications of state aid decisions on the Internet and in the Official Journal are listed in the '[State aid Weekly e-News](#)'.

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