

RE: LEGALITY OF FRENCH STATE SUPPORT FOR EDF IN RESPECT OF HINKLEY POINT C

OPINION

Introduction and summary

- 1) We are instructed by Harrison Grant on behalf of Greenpeace and Ecotricity to provide our opinion on whether state support for EDF from the French government in connection with the construction of two new nuclear reactors at Hinkley Point in Somerset would be legal under the EU state aid rules.¹ Any such support would be in addition to the significant support provided by the UK government and approved by the European Commission (“Commission”).

- 2) We consider that:
 - a) Any measures by the French government to recapitalise EDF in order to allow it to participate in the Hinkley project by waiving cash dividend payments in favour of shares would likely constitute State aid, under EU law. There are no reasons evident to us why a private investor would be willing to take such a step in the present circumstances; nor has the proposal been justified in that manner to our knowledge. Similar considerations apply to the other methods of recapitalisation under consideration.

 - b) Were the French government to notify the support as State aid, the Commission would have the power to declare it compatible with the internal market if it met certain criteria, in particular if it promoted a permitted objective and was proportionate. However, the Commission was willing to approve the support provided by the UK government only after the level of support was reduced – which indicates that any additional support provided by the French government would be unlikely to be regarded as proportionate.

 - c) EDF would be taking a substantial commercial risk if it made a final decision to invest in the Hinkley project on the basis of support from the French State which had not been

¹ Set out in Article 107 of the Treaty on the Functioning of the European Union (“TFEU”)

notified to the Commission, as State aid cannot lawfully be provided without the prior approval of the Commission following an investigation. If the French State undertook to do so without notifying the measures concerned, third parties would be able to ask the Commission to open an investigation, or could challenge the measures before a national court. If the support were determined to constitute (unapproved) aid, the Commission could order it to be repaid. EDF could then be in a position where it had to repay billions of euros to the French government, and also (because of the loss of capital) withdraw from the Hinkley project.

Factual and legal background

Factual background

- 3) In 2008, the UK and French governments announced a deal to construct a new generation of nuclear power stations. Two years later, Hinkley Point was named as one of eight suitable sites, and in 2011 EDF submitted plans for the development of a new reactor on the site. In October 2013, the UK government and EDF agreed that the company responsible for the project, at the time a wholly owned subsidiary of EDF, would be guaranteed a ‘strike price’ of £92.50 for every megawatt hour of power produced by the Hinkley plant for 35 years. The company was also provided with a state credit guarantee from the UK Treasury on the debt issued in connection with the project, up to £17 billion.
- 4) The UK government notified these measures to the Commission, which in December 2013 opened an investigation into their compatibility with the State aid rules. In a decision of 8 October 2014 (“the UK Decision”),² the Commission concluded that these measures constituted State aid. The measures were approved as compatible with the internal market only after the level of support provided by the UK government was scaled back. The UK Decision is being challenged by a number of interested parties, including the Austrian government and several renewable energy companies, before the European Court of Justice as disproportionate, in terms of its likely anti-competitive effects on energy markets.³
- 5) The French government, which owns 85% of the shares in EDF, had initially hoped to attract private investors to support the project. However, this did not prove possible. The

² Decision of 8 October 2014 on aid measure SA.34947 (2013/C)

³ See Case T-356/15 and Case T-382/15.

only other investor in the project is China General Nuclear Power Corporation (“CGN”), which is publicly owned and under the control of the Chinese government.

- 6) It remains for EDF to take a final investment decision confirming its participation in the Hinkley project. As discussed below, EDF is currently experiencing a range of financial pressures and requires additional capital in order to proceed. EDF might be able to raise some capital by selling some or all of its transmission unit RTE or other assets (in order not to constitute aid, any such sale would need to be on market terms). However, it appears that asset sales are unlikely to be sufficient, and in March 2016 press reports suggested that EDF would not be in a position to confirm its participation in Hinkley unless it was recapitalised with further state support from the French government.
- 7) We do not here comment on any steps that might be taken by the French government in order to address other financial concerns relating to EDF. This Opinion is concerned with the lawfulness of any steps taken by the French government to recapitalise EDF to the extent that they are attributable to the Hinkley project. It seems clear that EDF’s need for recapitalisation is significantly attributable to the Hinkley project and that the required level of recapitalisation is greater because of EDF’s proposed involvement in it.
- 8) The Hinkley project is by some distance the largest on EDF’s balance sheet, and as part of its investigation into the State aid provided by the UK government the Commission required EDF and other investors to make available up to £24.5bn as ‘contingent equity’. EDF’s share of that contingent equity is around £16bn, which amounts to more than three quarters of its stock market value.⁴
- 9) It is the financial implications of participating in the Hinkley project that have driven EDF to request additional support from the French government. On 11 March 2016, the CEO of EDF stated in a letter to staff that: *“Regarding Hinkley Point C ... We are currently negotiating with the French State to obtain commitments allowing us to secure our financial position. It is clear that I will not engage EDF in this project before these conditions are met. We have already gained agreement that the full dividend for 2015 is to be paid to the State in shares and not in cash, which represents EUR 1.8 billion of additional capital for EDF. These discussions are ongoing ...”*.

⁴ Hinkley Point is a costly mistake, but only France can pull the plug (Source: [Guardian, 14 March 2016](#))

- 10) Further, it appears that the French government is minded to recapitalise EDF specifically in order to allow EDF to participate in the Hinkley project. On 17 March 2016, Emmanuel Macron, the French Minister of the Economy, is reported to have stated: *“If there is a need to recapitalise [EDF], we will ... If there needs to be a further waiver of dividends [from EDF to government], we will ... If you believe in nuclear, you cannot say that you will not participate in the biggest nuclear project in the world. Not doing Hinkley Point would be a mistake”*.⁵
- 11) Given that negotiations continue at the time of writing, full details of the support contemplated are not currently available. We are, however, able to identify the key elements of the proposals being contemplated from reported statements in the public domain.⁶
- 12) On the basis of these public statements, the forms of assistance currently being contemplated by the French government (i.e. in addition to sanctioning any asset sales) appear to be as follows.
- a) The **first option** would entail the French state taking future dividends as shares rather than cash. This could be repeated for several years and is apparently regarded as “less sensitive” from a state aid perspective than a direct capital injection.
 - b) The **second option** would involve an increase in EDF’s capitalisation.
 - c) The **third option** would be to give EDF’s existing nuclear operations in France the sort of price support guarantee provided by the UK government for the Hinkley Point project.

The relevant legal provisions

- 13) The central EU legal provision regarding state aid is Article 107 of the Treaty on the Functioning of the European Union (“TFEU”), which refers to aid in any form whatsoever which distorts competition (the concept of an aid is wider than a subsidy).⁷

⁵ France agrees bailout for EDF to proceed with Hinkley Point C ([Source: The Guardian 17 March 2016](#)), and France pledges to help EDF make Hinkley Point happen (Source: [Reuters, 18 March 2016](#)).

⁶ EDF Chief’s gambit suggests will get backing for Hinkley Point (Source: [Reuters, 16 March 2016](#)), and France agrees bailout for EDF to proceed with Hinkley Point C ([Source: The Guardian 17 March 2016](#)).

⁷ Case 30/59 *Steenkolenmijnen v High Authority* [1961] ECR 1, p.19.

- 14) In summary, support will amount to a state aid when it meets the following criteria:
- a) the ‘aid’ must confer an economic advantage on the recipient;
 - b) the advantage must be granted directly or indirectly through State resources (in any form whatsoever) and must be imputable to the State;
 - c) the measure must favour certain undertakings or the production of certain goods (sometimes referred to as ‘selectivity’); and
 - d) the measure must be liable to distort competition and affect trade between Member States (although there is no need to show an actual effect).
- 15) The condition in sub-paragraph (b) would undoubtedly be satisfied were the French government to provide support in any of the forms outlined above, as all would obviously be provided through state resources.
- 16) The question of whether support from the French government would constitute State aid therefore turns on the other three requirements set out in paragraph ~~14)15)~~ above. This is discussed in the following two sections. The next section evaluates whether it would be lawful for the French state to provide EDF with additional finance by taking future dividends as shares rather than cash. Other potential forms of support are then addressed. The final two sections discuss the possibility that State aid from the French government could be declared compatible with the common market, and what could happen if such support were provided to EDF without being notified to the Commission.

Taking dividends as shares rather than cash

Introduction

- 17) As noted above, both EDF’s CEO and the French Minister of the Economy have suggested that EDF could be provided with the additional capital needed for it to participate in the Hinkley project by the French state taking future dividends as shares rather than cash. The French government waived its 2015 dividend in this way, and if repeated for several years the approach would provide EDF with many billion Euros of additional capital.
- 18) Comments in the press suggest that the parties consider this option to be ‘less sensitive’ from a state aid perspective than a direct capital injection. However, there is no basis for

assuming that this form of support would not infringe the state aid rules. As at present advised, we consider that the French government would be providing State aid if it took this measure.

- 19) In order to constitute State aid, the first criterion is whether a benefit or an advantage has been conferred on the recipient. In this context, this is to be determined by comparing the conduct of the state with that of a private investor. A capital injection by the State will be regarded as State aid where a private investor looking to make a normal return would not have made such an investment at the time it was made.⁸ In one case, for example, the General Court upheld a finding by the Commission that a private investor would not have agreed to capitalise a firm's debt in order to acquire share capital where the volume of debt was such that a normal return on the investment could not be expected within a reasonable period of time (and were there was no reliable restructuring plan which would enable the undertaking to regain viability).^{9 10}
- 20) The issue is therefore not whether a waiver of dividends in favour of shares is in the abstract the sort of thing that a private investor might do. Rather, a more pertinent issue is whether one or more private EDF shareholders which individually or collectively owned a large majority of EDF shares (i.e. a shareholding equivalent to that held by the French State) would be willing to waive dividends in favour of shares to the extent required in order to allow the company to participate in the Hinkley project, given all the present circumstances including EDF's current financial position.
- 21) For present purposes, it is assumed that the project could be profitable for EDF if everything went to plan, in particular if the reactor was delivered on time and on budget. The concern is that, for the reasons given below, there is a real risk that this will not happen, and the failure of the project could destabilise the entire company. As one expert in the financing of nuclear projects has stated, "*going ahead with Hinkley would amount to betting the*

⁸ E.g. Case C-142/87 *Belgium v Commission* [1990] ECR I-959, paras 22-29.

⁹ E.g. case T 152/99 *Hijos de Andres Molina v Commission* [2002] ECR II3049, paras 130-132.

¹⁰ Where the state's relationship is akin to a creditor the issue is whether the advantage to the undertaking is more favourable than would be granted under similar conditions by a private creditor. See, for example, Case C-256/97 *DMT* [1999] ECR I2913, para 25; Case T-1/08 *Buczek Automotive v Commission* [2011] ECR II-2107, para 70.

entire company”¹¹ and “[n]o normal company would consider such a risk, even if it hoped to make a high and predictable return in the future”.¹²

Factors relevant to a private investor

- 22) Some of the risks are common to all projects to build nuclear reactors. In the UK Decision,¹³ the Commission noted that such investments are subject to significant risks given high upfront capital costs, long construction times and the long period required to recoup the investment costs. There is a lack of market-based instruments to hedge against such risks. Further, there is always a risk that the energy policy of the relevant government might change. The results of the Commission’s modelling analysis “*indicate[d] with a reasonably high level of confidence ... that purely commercial investment in new nuclear would not come forward in time for addressing the energy policy needs the UK is facing in the absence of State aid*”.¹⁴ The fact that the Commission considered that private investors would not be willing to finance the building of a nuclear reactor within the UK’s desired timescale suggests that private shareholders would not be willing to waive their dividends in favour of shares in order to provide EDF with the capital required for it to participate in Hinkley.
- 23) In addition, though, a private shareholder in EDF which was considering such a measure would take into account a number of considerations that are specific to EDF and the Hinkley project, including developments since the Commission’s October 2014 decision which have exacerbated the strain on EDF’s finances. These factors make it even less likely that a private investor with a majority shareholding in EDF would be willing to take the action being contemplated by the French government at this point in time.
- 24) The context is that EDF’s finances are already under strain. The company has a level of debt more than twice its market value¹⁵ and has had to borrow to pay its dividend for the past four years.¹⁶ Once dividends are factored in, EDF’s 2015 cashflows were negative by more than €3bn.¹⁷ Its financial outlook has deteriorated over the past year as a result of the

¹¹ Why Hinkley Point C is in trouble (Source: [Blog of Simon Taylor](#), Director of the University of Cambridge Master of Finance degree, 21 February 2016).

¹² Hinkley Point is a costly mistake, but only France can pull the plug (Source: [Guardian, 14 March 2016](#)).

¹³ Decision of 8 October 2014 on aid measure SA.34947 (2013/C)

¹⁴ Paragraphs 382 to 384 and 390.

¹⁵ France pledges to help EDF make Hinkley Point happen (Source: [Reuters, 17 March 2016](#)).

¹⁶ Hinkley Point is a costly mistake, but only France can pull the plug (Source: [Guardian, 14 March 2016](#)).

¹⁷ Why Hinkley Point C is in trouble (Source: [Blog of Simon Taylor](#), Director of the University of Cambridge Master of Finance degree, 21 February 2016).

dramatic falls in energy prices which have reduced its earnings.¹⁸ Over the next few years EDF will need to undertake substantial additional investment even without the Hinkley project. It must spend some €55bn to upgrade its ageing French nuclear plants, €5bn to rollout smart meters and several billion euros to take over and restructure the reactor unit of fellow state-owned Areva. Committing to the Hinkley project would degrade EDF's balance sheet further.

25) EDF's assumption, in favour of the commitment, appears to be that the investment will be profitable and that everything will run to plan. However, the Hinkley scheme involves the building of new European Pressurised Water Reactors ("EPR") nuclear reactors. An EPR reactor has not yet been successfully constructed, and earlier (ongoing) projects have been subject to delays and cost overruns.

26) The first to be built was at Olkiluoto, in Finland. Originally scheduled to start operating in 2009, the station is now tentatively to be finished by 2018 and costs have trebled. The second station, built by EDF itself at Flamanville in Normandy, was intended to be completed in 2012 but now looks unlikely to start before 2018. It is also running at around three times the original cost. The French nuclear regulator is investigating potentially fatal problems in the fabric of the station that could lead to it being abandoned or rebuilt at even greater cost. Two EPRs being built in China are also behind schedule, despite China's expertise in nuclear construction.¹⁹ One commentator has observed: "*[g]iven the dreadful construction record of the previous EPRs, one would need to be wildly optimistic to assume Hinkley would go smoothly*".²⁰

27) In the light of such considerations, France's national audit body (the Cour des Comptes) has warned EDF that its investment in Hinkley is risky, and urged it to carefully review its plans.²¹ It has been reported that similar concerns are shared by many inside the company. In particular, EDF's former finance director is said to have resigned because of concerns that persisting with the Hinkley project would jeopardise the company's finances, and

¹⁸ EDF Finance Officer resigns over Hinkley Point Project ([Source: Daily Telegraph, 7 March 2016](#)).

¹⁹ Hinkley Point is a costly mistake, but only France can pull the plug ([Source: Guardian, 14 March 2016](#)).

²⁰ Hinkley Point is a costly mistake, but only France can pull the plug ([Source: Guardian, 14 March 2016](#)).

²¹ EDF warned over risky Hinkley Point nuclear project by French watchdog ([Source: International Business Times, 11 March 2016](#)).

EDF's unions and a number of senior EDF officials are believed to be against the project for similar reasons.²²

28) These considerations point to the conclusion that private EDF shareholders with a shareholding similar in size to that of the French State would be unwilling to waive billions of euros of dividend payments in favour of shares in order to provide EDF with the capital to participate in the Hinkley project.

EU case law

29) In the EU case law, the Commission and the European Courts have identified a number of considerations relevant to the assessment whether a private investor would be willing to provide the same or equivalent support to that provided by a national government. These factors suggest it is likely that any decision by the French government to waive its dividends in favour of shares would fall to be regarded as State aid.

30) **First**, state support is less likely to constitute State aid when it is made at the same time as a significant capital contribution on the part of a private investor in comparable circumstances: Case T-296/97 *Alitalia* [2000] ECR II-3871. There has been no suggestion that private shareholders in EDF would join the French government in waiving their dividends in favour of shares.

31) More generally, the French government has been unable to attract private investment into the Hinkley project and there appears to be little enthusiasm in the market for acquiring shares in EDF. Since the Hinkley project was announced in 2008, the value of EDF's shares has fallen by three quarters,²³ as a result of which it has dropped out of the CAC 40 (France's equivalent of the FTSE 100). Despite this dramatic fall in value, as of 28 March 2016, Reuters data indicated that six investment analysts were still advising investors to sell shares in EDF, with none having "buy" recommendations.²⁴

²² EDF Finance Officer resigns over Hinkley Point Project ([Source: Daily Telegraph, 7 March 2016](#)).

²³ Why Hinkley Point C is in trouble (Source: [Blog of Simon Taylor](#), Director of the University of Cambridge Master of Finance degree, 21 February 2016).

²⁴ After last week what do analysts think of EDF (Source: [Share Trading News, 28 March 2016](#)).

- 32) While these share price falls are likely at least in part to reflect the other pressures on EDF's finances, the additional risks that would come with EDF's involvement in the Hinkley project appear to have played a role. When, in October 2015, the Chinese government confirmed its plans to invest £6bn in the Hinkley project through CGN, the investment bank Investec responded by advising its clients to sell EDF shares, commenting "[w]e are unconvinced about the commercial logic of EDF's investment in Hinkley Point C".²⁵
- 33) **Second**, as stated in a leading practitioner text on State aids: "as a general rule the Commission tends to consider that any measure which benefits a company in financial difficulties is *prima facie* aid, regardless of the conditions under which the state decides to act".²⁶ As discussed above, EDF is presently in financial difficulties, given in particular that it is already highly leveraged, faces very large calls on its finances over the coming years and is experiencing falls in its earnings due to the drop in energy prices.
- 34) **Third**, state support is likely to constitute State aid where it appears that the support is motivated by broader political considerations, including the goal of preventing job losses, rather than by considerations which would motivate a private investor: Case C-278/92 *Spain v Commission* [1994] ECR I4103, para 22; Case C-278/00 *Greece v Commission* [2004] ECR I-3997, paras 44 to 48. There are reasons to suspect that is the case here.
- 35) Within a week of the statement by EDF's CEO that the company would not participate in the Hinkley project without further state support, the French Minister of Economy had stated that the Government would provide whatever recapitalisation was needed in order to allow EDF to participate: see paragraphs ~~9)10)~~ and ~~10)11)~~ above. There are two possible inferences which may be drawn from this. First, it appears to indicate that the French Government is committed to the Hinkley project at a high level, and is reluctant to reassess its economic merits in line with the recommendation of its national audit body. Second, it may also indicate that the French Government has already given an implied guarantee ("*whatever is needed*"), itself amounting to an aid for the purposes of State aid law.
- 36) The UK Times newspaper has reported that EDF has been told by the French President to press ahead with the Hinkley project, and that officials in Paris fear that a withdrawal could undermine confidence in the country's nuclear industry, upon which 220,000 jobs

²⁵ Investment bank Investec tells clients to sell shares in EDF ([Source: thisismoney.co.uk](http://thisismoney.co.uk), 24 October 2015).

²⁶ Hancher, EU State Aids, 4th edition, §3-085.

depend.²⁷ Similarly, the Financial Times has reported that senior figures within have said that the “*operation and financial risks are too large and politics is being put above shareholder interests.*”²⁸

Selective advantage and liability to distort competition and trade

37) The preceding paragraphs have considered whether a waiver of dividends in favour of shares by the French government would confer an advantage on EDF. In order to constitute aid, the state action must also favour certain undertakings (i.e. be selective) and be liable to distort competition and affect inter-state trade.

38) State support provided to an individual undertaking would obviously be selective.

39) As to the latter criterion, it is not necessary to demonstrate actual effects on competition and trade, only that the aid is ‘liable’ to have such effects.²⁹ Nor do the effects liable to occur have to be shown to be significant or substantial.³⁰ The analysis of the effects of the aid measure turn on the *ex ante* or *a priori* characteristics of the aid.

40) In the UK Decision, the Commission concluded that the support provided by the UK government to EDF’s subsidiary would be liable to distort competition and affect inter-state trade. The Commission noted that the generation and supply of electrical power is liberalised, and that the measures in question would enable the development of a large level of capacity (up to 7% of the UK market) which might otherwise have been the object of private investment by other market operators using alternative technologies, from either the UK or from other Member States. In addition, it stated that the UK measures could potentially distort investment decisions and displace alternative investments.³¹

41) The same considerations apply here. If EDF withdrew from the Hinkley project, it is possible that the ‘lost’ energy capacity would be provided by other market operators, potentially using alternative technologies. Indeed, it is axiomatic that the French support

²⁷ Don’t give up on Hinkley, Hollande tells EDF ([Source: The Times, 14 March 2016](#)).

²⁸ EDF finance chief quits over decision to push on with Hinkley Point ([Source: Financial Times, 7 March 2016](#)).

²⁹ E.g. Case C-372/97 *Italy v Commission* [2004] ECR I-3679, at paragraph 44.

³⁰ *Ibid.*

³¹ Paragraphs 340 and 341.

would distort investment decisions, because EDF has stated that it will not take a final decision to invest in the project unless it is recapitalised by the French government.

The other forms of potential support

42) As to the other forms of potential state support being contemplated by the French government, many of the same considerations as outlined above in relation to the potential waiver of dividends in favour of shares would be likely apply. In respect of each option, one would need to take into account the details of the support proposed and all the present circumstances to determine whether a private investor would be likely to adopt the same course of conduct.

43) In relation to **option two**, it is unclear at this stage exactly how it would be structured, but in principle a direct injection of capital into the EDF business from state funds could very likely constitute aid in circumstances where serious questions have been raised over the business case for the project and the French Government has to date been unable to attract private investment.

44) As for **option three**, we consider there to be little doubt that the provision of price support guarantees for existing EDF nuclear activities would constitute State aid, something which is conceded even by proponents of further support. Support in this form was classified as aid in the UK Decision in relation to the Hinkley project, and the context there was that the UK government wished to incentivise the building of a new reactor. That consideration does not apply to the majority of EDF's nuclear fleet which was built decades ago. Any such support would therefore likely involve the provision of 'operating aid' for EDF's existing activities (i.e. to reduce its current expenses), which is not normally capable of being compatible with the state aid rules, owing to its tendency to create pernicious effects on the market.

45) The other forms of support would be selective and liable to distort competition and affect trade for the reasons given above in relation to the potential waiver of dividends.

Compatibility of state aid granted with the internal market

- 46) Article 107(3)(c) TFEU provides that the aid that “may” be compatible with the internal market includes “*aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.*” In broad summary, aid may be legitimate where it promotes a legitimate objective and is proportionate, i.e. such that the distortions of competition and trade do not outweigh the benefits.
- 47) The impact of state aid on this project has already been considered in the UK Decision, in which the Commission found that the promotion of nuclear energy could be viewed as pursuing an objective of common interest. However, in relation to the proportionality limb of the analysis the Commission approved the aid only after requiring modifications of the terms of the aid and a reduction in the aid being granted. In other words, the Commission considered the proportionality analysis to be finely balanced. Any state aid for the project by the French Government will be in addition to the substantial amounts already provided by the UK government. In the circumstances, such aid would materially increase further the amount of public subsidy being provided to the project. As such, it may be inferred that substantial additional support would be liable adversely to affect trading conditions to an extent contrary to the common interest.
- 48) It should also be noted that the benefits taken into account by the Commission in the UK Decision were limited to the UK, i.e. the UK government argued that its State aid was necessary in order to secure sufficient capacity to meet UK energy needs with a reasonably tight time period. It seems unlikely that the considerations motivating action on the part of the French government, namely a desire to protect French jobs and maintain the reputation of the French nuclear industry, would be accepted by the Commission as justifications capable of rendering the aid compatible with the internal market.
- 49)** In the light of the pending challenges to the aid granted by the UK government before the Court of Justice, we note also that there will remain considerable uncertainty around the issue of lawful State aid for the Hinkley project for a significant period.

Conclusion

- 50) For the reasons explained above, we consider that the provision of further state support for the Hinkley project by the French Government would in the circumstances described be

likely to constitute State aid. Any such further support for the project would therefore be liable to be investigated by the Commission (with the possibility of appeals) over a period which is difficult to predict but which could run into years. For the reasons explained above it would be difficult to justify such further measures as being compatible with the internal market.

51) Furthermore, State aid cannot lawfully be provided without the prior approval of the Commission following an investigation. If the support were found to constitute aid (whether by the Commission or following a challenge in the national court by interested third parties) it would be liable to be required to be recouped from the company. As the European Court of Justice has stated: “... *recovery is the logical consequence of a decision of illegality and cannot therefore be disproportionate*”.³²

52) If it accepted support from the French government that had not been notified to and approved by the Commission, EDF could therefore subsequently find itself in a position where it was required to repay billions of euros to the French government. The resulting loss of capital could jeopardise its continued participation in the Hinkley project, potentially exposing it to further losses and liabilities, and its financial stability more generally. Any final decision to proceed with the Hinkley project on the basis of unapproved state support would therefore expose EDF (including its private shareholders and employees) to significant risks.

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BEN RAYMENT
JULIAN GREGORY

19 April 2016

³² Case C-303/88 *Italy v Commission* [1991] ECR I-1433.