

Lastly, the applicant claims an infringement of Article 108(2) TFEU, and of Articles 6 and 20 of Regulation 659/1999 in breach of the applicant's rights of defence and by extension in breach of the principle of good administration.

<sup>(1)</sup> Decision of the European Commission of 24 May 2011, E(2011) 3504 final, on State aid to certain Greek casinos No C 16/2010 (formerly NN 22/2010, formerly CP 318/2009).

<sup>(2)</sup> Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty

## Action brought on 13 November 2012 — HSH Investment Holdings Coinvest-C and HSH Investment Holdings FSO v Commission

(Case T-499/12)

(2013/C 26/119)

*Language of the case: German*

### Parties

**Applicants:** HSH Investment Holdings Coinvest-C Sàrl (Luxembourg, Luxembourg) and HSH Investment Holdings FSO Sàrl (Luxembourg) (represented by: H. Niemeyer and H. Ehlers, lawyers)

**Defendant:** European Commission

### Form of order sought

— Annul the defendant's decision of 20 September 2011 in Case C 29/2009 (ex N 264/2009) — HSH Nordbank AG;

— Order the defendant to pay the costs.

### Pleas in law and main arguments

In support of the action, the applicants rely on the following pleas in law to contest the conditions imposed on the minority shareholders:

1. First plea in law, alleging that no discrete aid was granted to the minority shareholders

The applicants maintain that the Commission incorrectly applied the concept of State aid in Article 107(1) TFEU by wrongly identifying the applicants as aid recipients. An increase in the value of the minority shareholders' shareholdings was simply an economic reflex following the aid granted to HSH Nordbank and not an indirect aid to the minority shareholders.

2. Second plea in law, alleging insufficient reasoning for the finding that the applicants obtained an advantage

The applicants argue in relation to this plea that the Commission infringed the duty to state reasons contained

in Article 296(2) TFEU by failing to explain adequately its finding that the applicants had received indirect aid or the reasons why the valuation of HSH Nordbank had been incorrectly determined. In addition, the Commission did not provide a figure for the level of the supposed aid to the minority shareholders and mixed up the examination of that aid with the examination of the burden-sharing.

3. Third plea in law, alleging incorrect fact-finding when examining whether the applicants received a financial advantage

In the context of this plea, the applicants complain that the Commission made mistakes in its determination of the facts. According to the applicants, the company which valued HSH Nordbank did not overvalue HSH Nordbank or thus the issue price of the new ordinary shares but carried out the valuation in conformity with recognised valuation methods.

4. Fourth plea in law, alleging failure to take into account prior payments by the applicants in the context of burden-sharing

The applicants claim that the Commission misapplied the conditions relating to burden-sharing which follow from Article 107(3)(b) TFEU and the restructuring communication, <sup>(1)</sup> when — while examining whether the applicants are sufficiently involved in the burden-sharing — it failed to take the prior payments made by them into account.

5. Fifth plea in law, alleging infringement of Article 7(1) of Regulation (EC) No 659/1999 <sup>(2)</sup> and the principle of legal certainty by terminating the formal investigation procedure unlawfully

The applicants argue in this connection that the Commission infringed Article 7(1) of Regulation No 659/1999 and the principle of legal certainty by terminating the formal investigation procedure with regard to the applicants without a decision of the kind provided for in Article 7 of Regulation No 659/1999.

6. Sixth plea in law, alleging infringement of Article 7(4) of Regulation No 659/1999, Article 107(3)(b) TFEU and the restructuring communication by the imposition of inappropriate conditions

With regard to this plea, the applicants argue that the Commission infringed Article 7(4) of Regulation No 659/1999 and the restructuring communication by imposing conditions unrelated to the restructuring of HSH Nordbank which in fact amounted to a covert authorisation of indirect aid subject to conditions.

7. Seventh plea in law, alleging infringement of the proportionality principle owing to an excessive burden being imposed on the applicants

The applicants complain that the Commission infringed the proportionality principle by imposing an excessive burden on them in the context of burden-sharing.

8. Eighth plea in law, alleging infringement of the principle of equal treatment by discriminating against the applicants

The applicants argue in this regard that the Commission infringed the principle of equal treatment by imposing conditions on the applicants in its decision which it had not imposed in other comparable cases.

The applicants raise the following additional pleas in law in respect of the contested decision:

1. First plea in law: Infringement of Article 107(3)(b) TFEU and the impaired assets communication<sup>(3)</sup> by calculating the incompatible aid element incorrectly

In the context of this plea it is argued that the Commission infringed Article 107(3)(b) TFEU and the impaired assets communication by incorrectly calculating the so-called incompatible aid element connected with the guarantee in favour of HSH Nordbank.

2. Second plea in law: Insufficient reasoning regarding determination of actual economic value

The applicants argue in relation to this plea that the Commission did not provide sufficient reasons how it determined the actual economic value of the portfolio covered by the guarantee.

3. Third plea in law: Infringement of Article 107(3)(b) TFEU and the impaired assets communication as a result of incorrect calculation of the claw-back

The applicants claim that the Commission infringed Article 107(3)(b) TFEU and the impaired assets communication by calculating the claw-back incorrectly.

4. Fourth plea in law: Infringement of the principle of equality in the calculation of the claw-back

Fourth, it is argued in the context in question that the Commission infringed the principle of equality by treating the HSH Nordbank unfavourably compared with other comparable cases.

5. Fifth plea in law: Infringement of Article 107(3)(b) TFEU and the proportionality principle by making authorisation conditional upon a disproportionately high balance sheet reduction

Finally, the applicants claim that the Commission also infringed Article 107(3)(b) TFEU and the principle of

proportionality by making its authorisation conditional upon a disproportionately high balance sheet reduction for HSH Nordbank.

- 
- (<sup>1</sup>) Commission communication on the return to viability and the assessment of restructuring measures in the financial sector in the current crisis under the State aid rules (OJ 2009 C 195, p. 9).  
 (<sup>2</sup>) Council Regulation No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [88] of the EC Treaty (OJ 1999 L 83, p. 1).  
 (<sup>3</sup>) Commission Communication on the treatment of impaired assets in the Community banking sector (OJ 2009 C 72, p. 1).
- 

## Action brought on 15 November 2012 — Ryanair v Commission

(Case T-500/12)

(2013/C 26/120)

*Language of the case: English*

### Parties

*Applicant:* Ryanair Ltd (Dublin, Ireland) (represented by: B. Kennelly, Barrister, E. Vahida and I. Metaxas-Maragkidis, lawyers)

*Defendant:* European Commission

### Form of order sought

The applicant claims that the Court should:

- Annul Article 1 of the Commission's Decision dated 25 July 2012 in State aid case SA.29064 (20011/C ex 2011/NN) finding that the differential rates applied in the Irish air travel tax ('ATT') between 30 March 2009 and 1 March 2011 constituted unlawful State aid contrary to Article 107(1) TFEU;
- Annul Articles 4, 5 and 6 of the same Decision; and
- Order the defendant to pay the costs of the present proceedings, including those incurred by the applicant.

### Pleas in law and main arguments

In support of the action, the applicant relies on five pleas in law.

1. First plea in law, alleging that the Commission erred in law in finding that the EUR 10 rate in the ATT was the 'normal' or legitimate 'standard' rate, despite the fact that this higher rate was at all material times unlawful as a matter of EU law.