

Action brought on 23 July 2012 — ING Groep v Commission

(Case T-332/12)

(2012/C 287/65)

Language of the case: English

Parties

Applicant: ING Groep NV (Amsterdam, The Netherlands) (represented by: O. Brouwer, J. Blockx and N. Lorjé, lawyers)

Defendant: European Commission

Form of order sought

— Annul the decision of the European Commission of 11 May 2012 C(2012)3150 final, State aid SA.28855 (N 373/2009) (ex C 10/2009 and ex N 528/2008)-The Netherlands ING — restructuring aid; and

— Order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant breached the principle of sound administration and the right to be heard by not consulting the Dutch State and ING with respect to facts and its views and assumptions that were pertinent for its conclusion that the amendment to the terms of the core-tier-1 capital injection constituted aid under Article 107(1) TFEU.
2. Second plea in law, alleging that the defendant erred in law and committed a manifest error of assessment in applying the market economy investor principle ('MEIP') test and failed to provide adequate reasoning when qualifying the amendment to the core-tier-1 capital injection as State aid and an aggravating factor in its assessment of the compensatory measures.
3. Third plea in law, alleging that the defendant breached Article 107(3)(b) TFEU and the principles of sound administration, proportionality, legal certainty, equal treatment and the duty to state reasons by failing to take into account the amount of aid when assessing the compensatory measures, and by wrongly calculating the relative amount of the aid and the circumstances under which the aid was granted when assessing the compensatory measures.

4. Fourth plea in law, alleging that the defendant breached Article 107(3)(b) TFEU, the principle of sound administration, proportionality and the duty to state reasons when making the price leadership bans legally binding on ING.

Action brought on 19 July 2012 — T&L Sugars and Sidul Açúcares v Commission

(Case T-335/12)

(2012/C 287/66)

Language of the case: English

Parties

Applicants: T&L Sugars Ltd (London, United Kingdom) and Sidul Açúcares, Unipessoal Lda (Santa Iria de Azóia, Portugal) (represented by: D. Waelbroeck, lawyer, and D. Slater, Solicitor)

Defendants: European Commission and the European Union, represented by the European Commission

Form of order sought

- Declare the present application for annulment under Article 263(4) TFEU and/or plea of illegality under Article 277 TFEU against Regulation 367/2012, Regulation 397/2012, Regulation 356/2012, Regulation 382/2012, Regulation 444/2011 and Regulation 485/2012 admissible and well founded;
- Annulment of Commission Implementing Regulation (EU) No 367/2012 of 27 April 2012 laying down necessary measures as regards the release of additional quantities of out-of-quota sugar and isoglucose on the Union market at reduced surplus levy during marketing year 2011/2012 (OJ 2012 L 116, p. 12);

- Annulment of Commission Implementing Regulation (EU) No 397/2012 of 8 May 2012 fixing allocation coefficient, rejecting further applications and closing the period for submitting applications for available additional quantities of out-of-quota sugar to be sold on the Union market at reduced surplus levy during marketing year 2011/2012 (OJ 2012 L 123, p. 35);
 - Annulment of Implementing Regulation (EU) No 1239/2011 (OJ 2011 L 318, p. 4), as amended by Commission Implementing Regulation (EU) No 356/2012, as regards the periods during which tenders may be submitted in response to the second and subsequent partial invitations to tender for the 2011/2012 marketing year for imports of sugar at a reduced customs duty (OJ 2012 L 113, p. 4);
 - Annulment of Commission Implementing Regulation (EU) No 382/2012 of 3 May 2012 on the minimum customs duty for sugar to be fixed in response to the fifth partial invitation to tender within the tendering procedure opened by Implementing Regulation (EU) No 1239/2011 (OJ 2012 L 119, p. 41);
 - Annulment of Commission Implementing Regulation (EU) No 444/2012 of 24 May 2012 on the minimum customs duty for sugar to be fixed in response to the sixth partial invitation to tender within the tendering procedure opened by Implementing Regulation (EU) No 1239/2011 (OJ 2012 L 135, p. 61);
 - Annulment of Commission Implementing Regulation (EU) No 485/2012 of 7 June 2012 on the minimum customs duty for sugar to be fixed in response to the seventh partial invitation to tender within the tendering procedure opened by Implementing Regulation (EU) No 1239/2011 (OJ 2012 L 148, p. 24);
 - In the alternative, (i) declare the plea of illegality against Articles 186(a) and 187 of Regulation 1234/2007⁽¹⁾ admissible and well founded and declare those provisions illegal, as well as annul the contested regulations, which are directly or indirectly based on those provisions; and (ii) declare the plea of illegality against Regulation 367/2012 and Regulation 1239/2011, as amended by Regulation 356/2012, admissible and well founded;
 - Condemn the EU as represented by the Commission to repair any damage suffered by the applicants as a result of the Commission's breach of its legal obligations and to set the amount of this compensation for the damage suffered by the applicants during the period 30 January 2012 to 24 June 2012 at 75 051 236 EUR plus any ongoing losses suffered by the applicants after that date or any other amount reflecting the damage suffered or to be suffered by the applicants as further established by them in the course of this procedure especially to take due account of future damage;
 - Order an interest at the rate set at the time by the European Central bank for main refinancing operations, plus two percentage points, or any other appropriate rate to be determined by your Court, be paid on the amount payable as from the date of your Court's judgement until actual payment;
 - Order the Commission to pay all costs and expenses in these proceedings.
- Pleas in law and main arguments**
- In support of the action, the applicants rely on eight pleas in law.
1. First plea in law, alleging violation of the principle of non-discrimination as, on the one hand, Regulation 367/2012 provides for a fixed, generally applicable 211 EUR per tonne surplus levy — *i.e.* less than half to the usual 500 EUR per tonne — applying to a specific quantity (250 000 tonnes) of sugar, divided equally only between beet processors applicants. On the other hand, Regulation 1239/2011 as amended by Regulation 356/2012, provides for an unknown, unpredictable customs duty, applicable only to auction winners (who can be cane refiners, beet processors, or any other third party) and for an unspecified total amount. The customs duty was most recently fixed at 312,60 EUR per tonne, *i.e.* nearly 50 % higher than the surplus levy for beet processors. The contrast between the two measures could not be starker. Indeed, every element of the measures discriminates against the cane sugar refiners and in favour of beet processors.
 2. Second plea in law, alleging a violation of the Regulation 1234/2007 and absence of an appropriate legal basis as, with regard to Regulation 367/2012, the Commission has no power whatsoever to increase quotas and is on the contrary required to impose high, dissuasive levies on the release of out-of-quota sugar on the EU market. As regards the tax auctions, the Commission clearly has no mandate or power to adopt this kind of measure, which was never envisaged in the basic legislation.
 3. Third plea in law, alleging a violation of the principle of legal certainty, as the Commission created a system whereby customs duties are not predictable and fixed through the application of consistent, objective criteria, but are rather determined by subjective willingness to pay (moreover of actors that are subject to very different pressures and incentives in this regard) with no actual link with the actual products being imported.

4. Fourth plea in law, alleging a violation of the principle of proportionality in so far as the Commission could easily have adopted less restrictive measures to tackle the supply shortage, which would have not been taken exclusively to the detriment of importing refiners.
5. Fifth plea in law, alleging a violation of legitimate expectations, as the applicants were legitimately led to expect that the Commission would use the tools available in Regulation 1234/2007 to restore the availability of supply of raw cane sugar for refining. The applicants were also legitimately led to expect that the Commission would preserve the balance between importing refiners and domestic sugar producers.
6. Sixth plea in law, alleging a violation of the principle of diligence, care and good administration, as the actions taken by the Commission were manifestly inappropriate in light of the supply shortage. The Commission should have eased import restrictions for cane refiners. Instead, the Commission increased domestic production and subjected access to extra imports to punitive and unpredictable taxes.
7. Seventh plea in law, alleging a violation of Article 39 TFEU since the Commission failed to achieve two of the objectives set out in this Treaty provision.
8. Eighth plea in law, alleging a violation of Commission Regulation 1006/2011 ⁽²⁾, as the duties applied to white sugar are indeed only fractionally higher than for raw sugar, the difference being around 30 EUR per tonne. This contrasts sharply with the 80 EUR difference between the standard import duty for refined sugar (419 EUR) and raw sugar for refining (339 EUR) which are set out in Commission Regulation 1006/2011.

In addition, in support of the action for damages, the applicants allege that the Commission exceeded gravely and manifestly the margin of discretion conferred to it by the Regulation 1234/2007, through its passivity and inappropriateness of action. Furthermore, the Commission failure to adopt adequate measures constitutes a manifest infringement of a rule of law '*intended to confer rights on individuals*'. The Commission violated in particular the EU general principles of legal certainty, non-discrimination, proportionality, legitimate expectations and the duty of diligence, care and good administration.

(1) Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (OJ 2007 L 299, p. 1).

(2) Commission Regulation (EU) No 1006/2011 of 27 September 2011 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2011 L 282, p. 1).

Action brought on 1 August 2012 — Klizli v Council

(Case T-336/12)

(2012/C 287/67)

Language of the case: English

Parties

Applicant: Yousef Klizli (Damascus, Syria) (represented by: Z. Garkova-Lyutskanova, lawyer)

Defendant: Council of the European Union

Form of order sought

- Annul Council implementing Decision 2012/256/CFSP of 14 May 2012 implementing Council Decision 2011/782/CFSP concerning restrictive measures against Syria (OJ L 126, p. 9), insofar as it concerns the applicant;
- Annul Council implementing Regulation (EU) No 410/2012 of 14 May 2012 implementing Article 32(1) of Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (JO L 126, p. 3), insofar as it concerns the applicant; and
- Order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging

- that the applicant was wrongfully enlisted as a person who provides financial support to the regime.

2. Second plea in law, alleging

- that the contested Council's acts were issued in the absence of any legal basis and infringe the duty to state reasons, the right to a fair hearing, the right to an effective judicial protection and the right to property; further they are in breach of the principle of proportionality and violate the applicant's good name.