

Pleas in law and main arguments

By the contested decision the Commission exempted the material DecaBDE in polymeric applications from the prohibition contained in Directive 2002/95/EC of the European Parliament and of the Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment ⁽¹⁾ ('the basic directive').

The Danish Government submits that the contested decision is defective in law inasmuch as DecaBDE in polymeric applications is exempted from the prohibition in the basic directive, contrary to the conditions laid down therein, on the grounds that

- such an exemption is not necessary in the light of scientific and technical progress;
- the Commission did not exempt a specific application of the material from the prohibition but in practice introduced an across-the-board exemption for all polymeric applications;
- the Commission failed to record that no possibilities for substituting or eliminating DecaBDE in polymeric applications have been found, which the Danish Government submits it ought to have done; and
- the Commission did not carry out an assessment to determine whether the negative burden in terms of environment, health and/or consumer protection which would result from substitution would be greater than the potential advantages in terms of environment, health and/or consumer protection.

The Danish Government also submits that the Commission attached weight to an unlawful criterion, namely a general risk assessment of the exempted material DecaBDE, and that the decision is vitiated by a fundamental formal defect inasmuch as the Commission failed to provide adequate reasons as to why it took the view that the conditions for exempting DecaBDE in polymeric applications from the prohibition in the basic directive had been satisfied.

⁽¹⁾ OJ 2005 L 271, p. 48.

⁽²⁾ OJ 2003 L 37, p. 19.

Action brought on 13 January 2006 — Mopro-Nord GmbH v Commission

(Case T-6/06)

(2006/C 74/54)

Language of the case: German

Parties

Applicant: Mopro-Nord GmbH (Altentreptow, Germany) (represented by: L. Harings and C.H. Schmidt)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Court should:

- annul paragraphs 25 to 27 of the defendant's decision on State aid No N 363/2004 of 6 September 2005 (OJ 2005 C 262, p. 5) in so far as they are based on assertions made by the German authorities that expenditure incurred before the Commission approved this individually notifiable aid, relating to the investment premium (investment subsidy), is not eligible for aid;
- in the alternative, annul the defendant's decision on State aid No N 363/2004 of 6 September 2005 (OJ 2005 C 262, p. 5) in its entirety;
- order the defendant to pay the costs.

Pleas in law and main arguments

The applicant contests Commission Decision C(2005) 3310 final of 6 September 2005 relating to State aid No N 363/2005 for the construction of a whey refining plant. The beneficiary of that aid is Mopro-Nord GmbH in Mecklenburg-Vorpommern. In the contested decision, the Commission informed the Federal Republic of Germany that the aid notified by it is EC-compatible. The applicant contests the decision in particular in so far as it is based on assertions made by the German authorities that expenditure incurred before the Commission approved this individually notifiable aid, relating to the investment premium (investment subsidy), is not eligible for aid.

In support of its claim the applicant submits that the defendant's determination of the facts is erroneous. It also complains of a breach of the obligation to give reasons under Article 253 EC and infringement of the principles of legal security and certainty. Moreover, by the contested decision, the Commission has infringed Article 4(3) of Regulation (EC) No 659/1999 ⁽¹⁾ and the principle of sound administration. The contested decision is also in breach of Article 87(3)(c) EC in conjunction with the Community framework for State aid in the agricultural sector ⁽²⁾. Finally, the applicant submits that the Commission's decision infringes the principle of protection of legitimate expectations and the prohibition of discrimination.

⁽¹⁾ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 83, 27.3.1999, p. 1).

⁽²⁾ OJ 2000 C 28, p. 2, and OJ 2000 C 232, p. 19.

Action brought on 23 January 2006 — Giant (China) v Council

(Case T-17/06)

(2006/C 74/55)

Language of the case: English

Parties

Applicant: Giant (China) Co., Ltd (Kunshan City, China) [represented by: P. De Baere, lawyer]