Pleas in law and main arguments

The application lodged by Iride SpA and Iride Energia SpA ('the applicants') concerns the Decision of 8 November 2006 by which the Commission closed the proceeding initiated pursuant to Article 88(2) EC to investigate the compatibility with Community law of a refund that Italy intends to grant to AEM Torino for stranded costs in the energy sector ([1]).

The applicants claim that the Court of First Instance of the European Communities should declare that the Decision is void in so far as it classes as State aid the measures taken to reimburse AEM Torino in respect of the stranded costs incurred during the liberalisation of the energy sector, and in so far as it suspends payment of the aid until such time as Italy has provided the Commission with evidence that AEM Torino has not received the aid declared to be unlawful and incompatible with Decision 2003/193/EC concerning tax relief for former *municipalizzate* [municipal administrative bodies] ('the Tax Relief Decision'), or with evidence that AEM Torino has reimbursed, with interest, any such aid that it may have received.

The application is based inter alia on the following main pleas:

(a) The measure in question does not constitute State aid in that it was not financed through the use of State resources and does not accord the recipients gratuitous advantage.

(b) The judgment in *Deggendorf* ([2]) is not applicable in the present case. The Commission has failed, in particular, to show that the conditions that must be met — according to the principles that may be extracted from *Deggendorf* — in order for payment of the aid to be suspended, have in fact been met. (In particular, the Commission has not shown the potential cumulative effect of the new measures and the earlier measures.) In particular, the Commission has not explained how it is possible that cumulative effects can arise as a result of the aid which is the subject of the Tax Relief Decision, and measures like the stranded costs, which are designed merely to bring about equalisation, and thus the effects of which are exhausted in the past, enabling the costs incurred during the period when the market was regulated to be amortised in a manner similar to the manner in which the undertakings would have proceeded if the sector had not been liberalised before those costs had been fully amortised.

([1]) OJ L 366, 21.12.2006, p. 62.
([2]) Case C-355/95 *TwD* v *Commission* [1997] ECR I-2549.

Action brought on 7 February 2007 — US Steel Košice v Commission

(Case T-27/07)

(2007/C 69/54)

Language of the case: English

Parties

Applicant: US Steel Košice sro (Košice, Slovakia) (represented by: E. Vermulst, lawyer, and C. Thomas, solicitor)

Defendant: Commission of the European Communities

Form of order sought

— Annul the Commission decision of 29 November 2006 concerning the national allocation plan for the allocation of greenhouse gas emission allowances notified by Slovakia in accordance with Directive 2003/87/EC of the European Parliament and of the Council;

— order the Commission to pay the applicant's costs.

Pleas in law and main arguments

The applicant seeks the annulment of Commission decision of 29 November 2006 concerning the national allocation plan for the allocation of greenhouse gas emission allowances for the period 2008-2012 notified by Slovakia in accordance with Directive 2003/87/EC ([1]).

In support of it's application, the applicant firstly alleges that the contested decision infringes Title 4, point 2(a) of Annex XIV to the Act of Accession 2003 ([2]) in that it incorrectly asserts that the conditions in that provision are independent obligations applying until 2009 regardless of whether Slovakia continues to grant the applicant the tax exemption that Slovakia may apply to the applicant until the end of the fiscal year 2009 notwithstanding Article 87 and 88 EC. The applicant argues that, accordingly, the decision is also contrary to criterion (4) of Annex III to Directive 2003/87/EC, which provides that the national allocation plan shall be consistent with other Community legislative and policy instruments.

Secondly, the applicant submits that the contested decision infringes the principle of legitimate expectations in that the Commission at several occasion made the applicant expect that the production limitations provided for in Title 4, point 2(a) of Annex XIV to the Act of Accession would cease to apply once the applicant no longer benefited from the tax exemption.

Thirdly, the applicant contends that the contested decision is unlawful because, instead of carrying out its limited functions under Article 9(3) of Directive 2003/87/EC, the Commission carried out an entirely independent calculation of the appropriate total emissions in Slovakia and imposed this on the Slovak Republic. Thereby the Commission usurped the competence of the Member States under Articles 9 and 11 of Directive 2003/87/EC.

Fourthly, the applicant submits that the contested decision is unlawful in that it was based on a rigid mathematical calculation which was imposed without public consultation and which ignored known factors influencing emissions specific to Slovakia in the period 2008-2012. The applicant finds that this approach violated Article 9(1) and 11(2) of Directive 2003/87/EC, criteria (1), (2) and (3) of Annex III to the said directive as well as the principle of legitimate expectations. The applicant contends that insofar as the Commission possessed any margin of appreciation, the Commission committed a manifest error in that appreciation.

Finally, the applicant claims that the contested decision is vitiated by a misuse of powers as it was motivated by a desire to achieve a scarcity of allowances as such in order to drive the prices of allowances upwards.

([1]) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 2003, p. 32).

([2]) Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ L 236, 2003, p. 33).

Action brought on 7 February 2007 — Fels-Werke GmbH and Others v Commission of the European Communities

(Case T-28/07)

(2007/C 69/55)

Language of the case: German

Parties

Applicants: Fels-Werke GmbH (Goslar, Germany), Saint-Gobain Glass Deutschland GmbH (Aachen Germany) and Spenner Zement GmbH & Co KG (Erwitte, Germany) (represented by: H. Posser and S. Altenschmidt, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul Article 1.2 of the Commission's Decision of 29 November 2006 on the national plan for the allocation of greenhouse gas emission allowances notified by Germany pursuant to Directive 2003/87/EEC of the European Parliament and of the Council (document number unpublished), insofar as it declares the allocation guarantees in respect of the first action period described in Chapter 6.2 of Germany's national allocation plan under the headings 'Additional new installations under Paragraph 11 of the ZuG 2007' and 'Allocations under Paragraph 8 of the ZuG 2007' to be incompatible with Directive 2003/87/EC;

— annul Article 2.2 of that decision insofar as it issues to the Federal Republic of Germany instructions for the application of the allocation guarantees in respect of the first action period described in Chapter 6.2 of Germany's national allocation plan under the headings 'Additional new installations under Paragraph 11 of the ZuG 2007' and 'Allocations under Paragraph 8 of the ZuG 2007' and in so doing also requires the application of the same performance factor as for other comparable existing installations;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicants challenge the Commission's decision of 29 November 2006 concerning the national plan for the allocation of greenhouse gas emission allowances which Germany notified in accordance with Directive 2003/87/EC of the European Parliament and of the Council. In that decision the Commission objects to certain aspects of the national allocation plan for Germany on account of incompatibility with Annex III to Directive 2003/87/EC ([1]).

The applicants, operators of installations subject to compulsory emissions trading, claim to be directly and individually concerned by the contested decision.

In support of their action that they put forward four pleas:

First of all, they submit that on 29 November 2006 the defendant was no longer entitled to reject the German national allocation plan, as the mandatory time-limit for doing so in Article 9(3) of Directive 2003/87/EC had already expired.

Moreover, on the merits, the applicants complain of an incorrect application of Article 9(3) in conjunction with the criteria of Annex III to Directive 2003/87/EC. In their view, the allocation guarantees criticised by the Commission for new installations are not State aid within the meaning of Article 87(1) EC. No unjustified preference was given to the installations in question.