

Pleas in law and main arguments

The applicant seeks the annulment of the decision C(2008) 1089 final of the Commission of the European Communities of 2 April 2008 by which the Commission declared incompatible with the common market the State aid granted by the applicant and the Communauté d'agglomération du Douaisis in favour of Arbel Fauvet Rail SA in the form of advances repayable at an annual rate of interest of 4,08 % corresponding to the Community reference rate applicable when the loan was granted. The Commission considered that, taking into account its financial standing, Arbel Fauvet Rail SA would not have been able to obtain funds on such favourable terms in the financial market.

The applicant claims first that the Commission committed a manifest error of assessment and disregarded its obligation to state reasons, inasmuch as it considered that the source of the funds was, in part, the Communauté d'agglomération du Douaisis and did not take account of the specific legal features of the Communauté d'agglomération which is a public institution of intercommunity cooperation endowed with administrative and budgetary autonomy in relation to the towns and communities which are members of it. The applicant considers that the aid granted is consequently not attributable to the State.

The applicant further claims that the Commission committed errors of assessment (i) by describing Arbel Fauvet Rail SA as a firm in difficulty and (ii) by considering that Arbel Fauvet Rail SA could not have obtained the operative rate of interest in normal market conditions.

The applicant claims in addition that the Commission did not conduct its examination of the case with the required diligence, inasmuch as it did not specify either the amount of the aid to be recovered, nor the value of the aid and it did not provide any evidence capable of justifying an increased interest rate to be applied to the repayable advances because of a situation of particular risk in relation to Arbel Fauvet Rail SA.

Lastly, the applicant relies on an infringement of the principle that both parties should have the right to be heard, since the applicant's views were not heard during the administrative procedure.

Action brought on 11 July 2008 — Land Burgenland v Commission

(Case T-268/08)

(2008/C 247/27)

Language of the case: German

Parties

Applicant: Land Burgenland (represented by: U. Soltész and C. Herbst, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- Pursuant to Article 231(1) EC, annul Commission Decision C(2008) 1625 final of 30 April 2008 (No C 56/2006, ex NN 77/2006 — Privatisation of the Bank Burgenland) in its entirety;
- Pursuant to Article 87(1) of the Rules of Procedure of the Court, order the Commission to pay the applicant's costs.

Pleas in law and main arguments

The applicant contests Commission Decision C(2008) 1625 final of 30 April 2008 in which the Commission decided that the State aid which Austria granted in contravention of Article 88(3) EC to the Versicherungsgesellschaft Grazer Wechselseitige Versicherung AG and the GW Beteiligungserwerbs- und -verwaltungs-GmbH in the context of the privatisation of the HYPO Bank Burgenland AG is incompatible with the common market.

The applicant makes the following pleas in law in support of its action:

- erroneous application of Article 87(1) EC by the Commission when it fixed the market price, as a tender procedure is not mandatory;
- erroneous application of Article 87(1) EC by the Commission as a result of the infringement of existing Commission practice;
- erroneous application of Article 87(1) EC by the Commission since a private seller would also have had to predict that the Austrian Financial Market Authority would reject the bidder which made the highest bid;
- erroneous application of Article 87(1) EC by the Commission since the applicant should have been allowed to take into account the legal guarantee ('Ausfallhaftung') for certain liabilities of the privatised bank in its decision to award aid;
- erroneous application of the private vendor principle by the Commission when assessing the influence of the legal guarantee on the decision to sell;
- erroneous application of Article 87(1) EC by the Commission as a result of mistaken application of the burden of proof or of the obligation to submit evidence in a tender procedure;
- erroneous application of Article 87(1) EC by the Commission since the tender by the bidder with the highest offer cannot operate as the basis for the determination of the market price;

- incorrect assessment of the economic value of the share issues of the privatised bank by the Commission; and
- erroneous application of Article 87(1) EC by the Commission in the context of the determination of a State aid component.

Action brought on 8 July 2008 — Germany v Commission

(Case T-270/08)

(2008/C 247/28)

Language of the case: German

Parties

Applicant: Federal Republic of Germany (represented by: M. Lumma, assisted by C. von Donat, lawyer)

Defendant: Commission of the European Communities

Form of order sought

- Annul Commission Decision C(2008) 1615 final of 29 April 2008 reducing the contribution under the European Regional Development Fund (ERDF) granted pursuant to Commission Decision C(94) 1973 of 5 August 1994 for the Operational Programme Berlin (East) Objective 1 (1994-1999) in the Federal Republic of Germany;
- Order the Commission to bear the costs.

Pleas in law and main arguments

By the contested decision the Commission reduced the financial contribution from the ERDF for the Operational Programme for the Objective 1 region of the Land of Berlin in the Federal Republic of Germany (1994-1999).

In the reasoning for its action the applicant claims first that the Commission erroneously evaluated the factual situation. The applicant alleges in particular that the Commission misjudged the results of particular verifications and unjustifiably found systematic errors in management and control arrangements.

Second, the applicant argues that there is no legal basis for the application of flat-rate or extrapolated financial corrections to the Operational Programme in the Programming Period 1994-1999 as there were no rules available in respect of that period similar to those laid down in Article 39 of Regulation (EC) No 1260/99 ⁽¹⁾. Furthermore, nor can a sufficiently precise legal basis be found in the provisions of Article 24 of Regulation (EEC) No 4253/88 ⁽²⁾, the internal guidelines of the Commission of 15 October 1997 on net financial corrections within the framework of Article 24 of Regulation No 4253/88 or the principles of sound financial management provided for in

Article 274 EC. According to the applicant it is also not possible to find a corresponding administrative practice which has existed over many years and is generally accepted.

The applicant claims moreover that the contested decision infringes Article 24(2) of Regulation No 4253/88 as no irregularities in the sense of that provision have occurred. It also claims in that context that even if the conditions for a reduction in accordance with Article 24(2) of Regulation No 4253/88 are met, the Commission should have used the discretion available to it and weighed up whether the reduction was proportionate.

In the alternative, the applicant argues that the flat-rate corrections are disproportionate and that the Commission carried out the extrapolation on an inadequate factual basis.

Furthermore, the applicant claims that the defendant infringed its obligation to provide sufficient reasons for the contested decision.

Finally, the applicant asserts that the Commission infringed the principle of partnership since, notwithstanding numerous checks by its financial controllers during the 1994-1999 Programming Period, at no point were financial consequences contemplated on account of systemic weaknesses.

⁽¹⁾ Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds (OJ 1999 L 161, p. 1).

⁽²⁾ Council Regulation (EEC) No 4253/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 374, p. 1).

Action brought on 17 July 2008 — Communauté d'agglomération du Douaisis v Commission

(Case T-279/08)

(2008/C 247/29)

Language of the case: French

Parties

Applicant: Communauté d'agglomération du Douaisis (represented by: M.-Y. Benjamin, lawyer)

Defendant: Commission of the European Communities.

Form of order sought

- Annul the decision No C 38/2007 of the Commission of 2 April 2008.