

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant puts forward five pleas in law in support of its action.

1. First plea in law: breach of the obligation to give reasons under the second paragraph of Article 296 TFEU

— The applicant submits in this respect that the Commission has not explained why it combined two applications submitted by Germany for an extension of the time-limit into one single application.

— The Commission has also not explained why the conditions for an extension of the time-limit under Article 2(2) of Commission Decision C(2009) 3900 final, corrected on 12 May 2009, on State aid which Germany seeks to grant in favour of restructuring WestLB AG (C-43/2008 [N 390/2008] ('the decision of 12 May 2009'), are not met.

2. Second plea in law: errors of assessment and appraisal

— The applicant submits in this connection that, in relation to the grant of an extension of the time-limit, the Commission based its discretionary decision on an incorrect finding of fact. In the applicant's opinion, the contested decision wrongly presupposes that the extension of the time-limit was requested only up to 15 February 2011, or implicitly finds that it was no longer necessary to decide on a further application for a longer period.

— The applicant also argues that the Commission made no use of the option to extend the time-limit expressly provided for in Article 2(2) of the decision of 12 May 2009, notwithstanding the fact that the conditions for so doing were met. Instead, the Commission relied on an unwritten *sui generis* right of extension which has no legal basis and the specific conditions of which are utterly vague.

3. Third plea in law: infringement of the principle of proportionality

— In this respect the applicant contends, inter alia, that the Commission's decision on the cessation of the new operations of Westdeutsche Immobilienbank AG after 15 February 2011 is disproportionate to the disadvantages resulting from such cessation.

4. Fourth plea in law: infringement of the principle of equal treatment

— In this context the applicant maintains that, in other cases linked to the financial crisis, in which financial institutions were granted much greater aid, the

Commission granted significantly longer time-limits for the sale of holdings and also property financing companies.

5. Fifth plea in law: breach of Article 41 of the Charter of Fundamental Rights of the European Union and of the principle of sound administration

— In the context of the fifth plea in law, the applicant claims that the Commission does not have the right to interpret and take a decision on applications made by a Member State in a manner which is at variance with their express wording, meaning and purpose.

Action brought on 23 January 2011 — Koninklijke Luchtvaart Maatschappij v Commission

(Case T-28/11)

(2011/C 72/48)

Language of the case: English

Parties

Applicant: Koninklijke Luchtvaart Maatschappij NV (Amstelveen, the Netherlands) (represented by: M. Smeets, lawyer)

Defendant: European Commission

Form of order sought

— annul Commission Decision No C(2010) 7694 final on 9 November 2010 in whole or in part, and in subsidiary order,

— reduce the fine imposed.

Pleas in law and main arguments

Application pursuant to Article 263 of the Treaty on the Functioning of the European Union (the 'TFEU') (ex Article 230 EC) for the review and annulment of Commission Decision No C(2010) 7694 final on 9 November 2010, relating to proceedings under Article 101 TFEU (ex Article 81 EC), Article 53 of the EEA Agreement and article 8 of the Agreement between the European Community and the Swiss Confederation on Air Transport (Case COMP/39.258 — Airfreight) addressed to KLM N.V.; and, in subsidiary order, for the reduction of the fine imposed pursuant to Article 261 TFEU (ex article 229 EC).

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

1. First plea in law, alleging that the contested decision fails to state reasons within the meaning of article 296 TFEU and article 41 (2) (C) of the Charter of Fundamental Rights of the European Union. In this regard the applicant submits the following arguments:
 - fundamental inconsistency between the operative part of the decision and the statement of reasons;
 - inconsistencies between the operative part of the decision and the statement of reasons preclude an effective review of the decision by the Court;
 - inconsistencies and lack of clarity within the statement of reasons concerning (i) the scope of the infringement and the addressees of the decision, (ii) the non-commissioning of surcharges, and (iii) the introduction of the fuel surcharge preclude an effective review of the decision by the Court;
 - inconsistencies and lack of clarity in the statement of reasons in relation to the application of the 2006 Fining Guidelines and the imposition of fines preclude an effective review of the decision by the Court.
2. Second plea in law, alleging that the decision was taken in violation of the right to due process within the meaning of article 41, 47, 48, 49, and 50 of the Charter of Fundamental Rights of the European Union. In this regard the applicant submits the following arguments:
 - the Commission failed to respect the right to be heard, the right to a fair trial and the presumption of innocence under article 41 (2) (a), 47 and 48 of the Charter by omitting to hear the addressees on the various changes to the scope of the case and the number of addressees;
 - violation of the principle of the legality and proportionality of fines under article 49 Charter by including KLM Cargo's full turnover in the value of sales under the 2006 Fining Guidelines, and the right to be heard in that regard;
 - violation of the principle of the legality and proportionality of fines under article 49 Charter and the principle of non bis in idem of article 50 Charter by including sales outside the EEA in the value of sales under the 2006 Fining Guidelines and by using an indiscriminate criterion to cap that value of sales, and the right to be heard in that regard.
3. Third plea in law, alleging that the fine has been set in breach of article 101 TFEU, article 23 of Regulation 1/2003 ⁽¹⁾ and the 2006 Fining Guidelines since:
 - the 2006 Fining Guidelines do not allow to include sales which are not directly or indirectly related to the infringement in the value of sales;
 - the 2006 Fining Guidelines do not allow the fine to be based on sales outside the EEA.
4. Fourth plea in law, alleging that the determination of fines under the 2006 Fining Guidelines is manifestly erroneous and in violation of the principles of legitimate expectations, proportionality and equal treatment. In this regard the applicant submits the following arguments:
 - it is manifestly erroneous and a violation of the principles of legitimate expectations, proportionality and equal treatment to hold that the sales related directly or indirectly to the infringement are KLM Cargo's full sales;
 - it is manifestly erroneous and in violation of the principles of legitimate expectations, proportionality and equal treatment to hold that the sales related directly or indirectly to the infringement should include KLM Cargo's sales outside the EEA;
 - it is manifestly erroneous and in violation of the principles of proportionality and equal treatment to determine the gravity of the infringement without reference to the nature of surcharges and to determine both the value of sales and the gravity of the infringement with reference to the global scope of the infringement;
 - it is manifestly erroneous and in violation of the principles of proportionality and equal treatment to determine the additional amount of the fine ('entry fee') irrespective of the duration of the infringement;
 - it is manifestly erroneous and in violation of the principles of proportionality and equal treatment to set the reduction of the fine on account of governmental intervention at 15 %.

⁽¹⁾ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ 2003 L 1, p. 1