

— order the European Commission to pay the costs incurred by Castelnou Energía S.L. in these proceedings

Pleas in law and main arguments

In support of its application, the applicant puts forward eight pleas in law.

- The first plea alleges infringement of Article 108(2) TFEU and Article 4(4) of 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 1999 L 83, p. 1), since the Decision was adopted without the formal investigation procedure previously having been opened, despite the fact that there were serious doubts as to the compatibility of the Decision.
- The second plea alleges infringement of Article 106(2) TFEU, of Article 107 TFEU in conjunction with Article 108(2) TFEU and Article 4(4) of Regulation No 659/1999, since the Commission's analysis of the measure was incomplete in that it failed to assess the compatibility of the measure at issue as a whole — the measure comprising three different elements (i.e. financial compensation for electricity producers, the preferential dispatch mechanism and the obligation to purchase domestic coal).
- The third plea alleges infringement of the obligation to state reasons laid down in Article 296 TFEU, since the Commission failed to explain the reasons which led it not to assess the compatibility of all the components of the measure.
- The fourth plea alleges infringement of the general principles of the right to a fair hearing and of sound administration which must govern the administrative procedure, given that Castelnou was not afforded an opportunity to put forward its arguments in the framework of the formal investigation procedure which should have been initiated by the Commission.
- The fifth plea alleges infringement of Article 106(2) TFEU, of the Community framework for state aid in the form of public service compensation (OJ 2005 C 297, p. 4) and of Article 11(4) of Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC (OJ 2003 L 176, p. 37), given that (i) the measure is not justified on the grounds of any risk to the electricity supply, which would determine — as the Commission claims is the case — that there is a need for a service of general economic interest and (ii) even if there were a risk to the electricity supply (which there is not), the measure is in any event disproportionate to the

objective of safeguarding the security of the electricity supply and is, therefore, unlawful.

- The sixth plea alleges misuse of powers by the Commission, since, despite the existence of objective, relevant and coherent evidence showing that the measure is not intended to safeguard security of the electricity supply but rather to support the mining industry, the Commission based its decision finding the measure to be compatible on a reason which it knew not to be genuine, thereby adopting the decision for reasons other than those stated.
- The seventh plea alleges illegality of the Decision, given that its adoption entails an infringement on the part of the Commission of the provisions of the TFEU which safeguard the free movement of goods (Articles 28 TFEU and 34 TFEU) and the freedom of establishment (Article 49 TFEU).
- The eighth plea alleges an error of law on the part of the Commission, as the measure infringes certain provision of secondary European Union law, namely: 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 (OJ 2003 L 275, p. 32), as amended by Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 (OJ 2009 L 140, p. 63); Directive 2005/89/EC of the European Parliament and of the Council of 18 January 2006 concerning measures to safeguard security of electricity supply and infrastructure investment (OJ 2006 L 33, p. 22); and Council Regulation (EC) No 1407/2002 of 23 July 2002 on State aid to the coal industry (OJ 2002 L 205, p. 1).

Order of the General Court of 25 January 2011 — Basell Polyolefine v Commission

(Case T-399/07) ⁽¹⁾

(2011/C 80/60)

Language of the case: German

The President of the First Chamber (extended composition) has ordered that the case be removed from the register.

⁽¹⁾ OJ C 315, 22.12.2007.