

**Action brought on 4 July 2012 — Germany v Commission**

(Case T-295/12)

(2012/C 273/26)

*Language of the case: German***Parties**

*Applicant:* Federal Republic of Germany (represented by: T. Henze and J. Möller, and by T. Lübbig and M. Klasse, lawyers)

*Defendant:* European Commission

**Form of order sought**

— Annul the decision of the European Commission of 25 April 2012 on State aid SA.25051 (C 19/2010) (ex NN 23/2010) granted by Germany to the Zweckverband Tierkörperbeseitigung in Rhineland-Palatinate, Saarland, Rheingau-Taunus-Kreis and Landkreis Limburg-Weilburg (Reference: C(2012) 2557 final);

— order the defendant to pay the costs.

**Pleas in law and main arguments**

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

1. First plea in law: infringement of Article 107(1) TFEU and Article 106(2) TFEU on account of the Commission's erroneous denial that the Zweckverband's provision of reserve capacity to cope with epidemics is a service of general economic interest, and because the Commission flagrantly goes beyond the standard of assessment set for it by the Courts of the European Union ('the Courts of the Union'). In particular the Commission fails to recognise that it may, according to the established case-law of the Courts of the Union, review the Member States' margin of discretion in relation to the definition of services of general economic interest only in regard to 'manifest errors of assessment', and that it may not substitute its own assessment for that of the competent authorities of the Member State.
2. Second plea in law: infringement of Article 107(1) TFEU owing to the erroneous finding of an economic advantage on the basis of an erroneous assessment of the 'Altmark criteria', according to which compensation for the discharge of public service obligations does not result in any 'favouring' within the meaning of Article 107(1) TFEU. The Commission made errors in the assessment of each of the four Altmark criteria relevant to the outcome of the case. In particular, with regard to the third Altmark criterion, the Commission did not confine itself to the issue requiring determination: whether compensation exceeds what is necessary to cover the costs incurred in discharging public service obligations. Instead, the Commission unlawfully examines whether the size of the

reserve capacity to cope with epidemics that is provided by the Zweckverband Tierkörperbeseitigung is incommensurate with the epidemic scenarios considered possible, which it affirms, notwithstanding experts' reports to the contrary.

3. Third plea in law: infringement of Article 107(1) TFEU on account of erroneous findings in respect of the requirements that there be an effect on trade between Member States and distortion of competition. The Commission acknowledges that the Zweckverband Tierkörperbeseitigung has a legitimate regional monopoly in its disposal area, in which it does not face any legal competition. However, the Commission does not draw the necessary conclusion from this that any — even just potential — effect on trade between Member States or distortion of competition must be ruled out because the Zweckverband Tierkörperbeseitigung is not in competition with other undertakings, particularly undertakings from other Member States willing to become established.
4. Fourth plea in law: infringement of Article 106(2) TFEU on account of an erroneous assessment of that provision's conditions for approval. In particular the Commission fails to recognise in the contested decision that it must, under that provision, ascertain whether compensation for services of general interest amounts to overcompensation. It may not, however, discount the requirements of that provision by questioning the level of costs of provision, the appropriateness of political decisions taken by the national authorities in that field or the economic efficiency of the operator.
5. Fifth plea in law: interference in the division of powers between the European Union and Member States and breach of the subsidiarity principle of European Union law in so far as the Commission flagrantly disregards the right of assessment of the Member States and the subdivisions of those States in relation to the determination and definition of services of general interest by substituting its own assessment for the decision of the competent authorities (infringement of Article 14 TFEU and of Article 5(3) TEU).
6. Sixth plea in law: error of assessment on the part of the Commission and breach of the general prohibition of discrimination under European Union law, in that the Commission did not confine itself to an examination of manifest errors of assessment in its review of the definition of public service.
7. Seventh plea in law: failure to state reasons for the contested decision (infringement of Article 296(2) TFEU), since the Commission does not comment in that decision on the 'manifest error of assessment', within the meaning of the case-law of the Courts of the Union, made by the competent authorities, the legislature and the Bundesverwaltungsgericht (German Federal Administrative Court) in describing the provision of reserve capacity to cope with epidemics as a service of general economic interest.