

2. Second plea in law: Infringement of Article 108(1) TFEU and the principle of legal certainty

— The applicant submits in that regard that the Commission infringed Article 108(1) TFEU and the principle of legal certainty by applying the procedure for new aid pursuant to Article 4(4) of Regulation No 659/1999 instead of the procedure for existing aid pursuant to Article 17 et seq. of Regulation No 659/1999 in order to review its provisional assessment of the EEG as aid. In that regard, the applicant observes in particular that, by decision of 22 May 2002, the Commission did not classify the 2000 EEG as aid within the meaning of Article 107(1) TFEU because there was no transfer of State resources. The changes from the 2000 EEG to the 2012 EEG were not substantial in comparison to the Commission decision of 22 May 2002. The Commission, therefore, could have asserted an amended legal opinion in a proceeding pursuant to Article 108(1) TFEU without impacting on the applicant.

3. Third plea in law: Infringement of Article 41 of the Charter of Fundamental Rights and the principle of audi alteram partem

— The applicant also claims that the defendant adopted the contested decision without previously giving the applicant the opportunity to provide comments.

⁽¹⁾ 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.

Action brought on 30 April 2014 — P-D Glasseiden and Others v Commission

(Case T-272/14)

(2014/C 223/31)

Language of the case: German

Parties

Applicants: P-D Glasseiden GmbH Oschatz (Oschatz, Germany) P-D Interglas Technologies GmbH (Erbach, Germany), P-D Industriegesellschaft mbH, Glasfaser Brattendorf (Wilsdruff STT Grumbach, Germany) and Glashütte Freital GmbH (Freital, Germany) (represented by: H. Janssen and G. Engel, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

- annul the decision of the European Commission of 18 December 2013 in State aid case SA.33995 (2013/C) — Support for renewable electricity and reduced EEG-surcharge for energy-intensive users;
- order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

In support of the action, the applicants rely on three pleas in law.

1. First plea in law: Infringement of Article 107(1) TFEU

— The applicants claim that the contested decision infringes Article 107(1) TFEU because the EEG-surcharge provided for in the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources, hereinafter referred to as EEG) and the special compensation regime did not constitute an allocation of State or State-controlled resources. All the facts relevant to the qualification of those measures were determined in the preliminary proceedings between the Commission and the Federal Republic of Germany. There were no longer any doubts, which the Commission should have found in a proceeding pursuant to Article 108(2) TFEU and Article 4(4) of Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty. ⁽¹⁾

2. Second plea in law: Infringement of Article 108(1) TFEU and the principle of legal certainty

— The applicants submit in that regard that the Commission infringed Article 108(1) TFEU and the principle of legal certainty by applying the procedure for new aid pursuant to Article 4(4) of Regulation No 659/1999 instead of the procedure for existing aid pursuant to Article 17 et seq. of Regulation No 659/1999 in order to review its provisional assessment of the EEG as aid. In that regard, the applicants observe in particular that, by decision of 22 May 2002, the Commission did not classify the 2000 EEG as aid within the meaning of Article 107(1) TFEU because there was no transfer of State resources. The changes from the 2000 EEG to the 2012 EEG were not substantial in comparison to the Commission decision of 22 May 2002. The Commission, therefore, could have asserted an amended legal opinion in a proceeding pursuant to Article 108(1) TFEU without impacting on the applicants.

3. Third plea in law: Infringement of Article 41 of the Charter of Fundamental Rights and the principle of audi alteram partem

— The applicants also claim that the defendant adopted the contested decision without previously giving the applicants the opportunity to provide comments.

⁽¹⁾ 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.

Action brought on 30 April 2014 — Lech-Stahlwerke v Commission

(Case T-274/14)

(2014/C 223/32)

Language of the case: German

Parties

Applicant: Lech-Stahlwerke GmbH (Meitingen, Germany) (represented by: I. Zenke and T. Heymann, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Decision 2014/C 37/07 of the European Commission of 18 December 2013 to initiate the formal investigation procedure under Article 108(2) TFEU in relation to the support for the generation of electricity from renewable energy sources and from mine gas in accordance with the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources) in the version of 25 October 2008, as amended by Article 5 of the law of 20 December 2012, and the reduced EEG-surcharge for energy-intensive users, in so far as the reduced EEG-surcharge for energy-intensive users such as the applicant is classified as aid within the meaning of Article 107(1) TFEU and provisionally declared incompatible with the internal market in that decision.

— order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law: Infringement of Article 107(1) TFEU — no State aid

— The applicant claims that the support mechanism of the Gesetz für den Vorrang erneuerbarer Energien (hereinafter referred to as EEG) as a whole and particularly the special compensation regime for energy-intensive users did not constitute State aid within the meaning of Article 107(1) TFEU because there is no direct or indirect transfer of State resources. The support is financed solely from private resources, the financing flows of which are not controlled by any State authority.