

- In addition, the Commission is bound by its decision by which it did not classify the 2000 EEG as aid within the meaning of Article 107(1) TFEU because there was no transfer of State resources, and therefore erred in law by classifying the 2012 EEG as a new, unlawfully implemented aid scheme.
  - In addition, the Commission did not adequately examine and therefore also did not realise that the exceptions for energy-intensive users are justified according to the aim, nature and scheme of the 2012 EEG and therefore did not constitute a selective advantage.
2. Second plea in law: Infringement of Article 108(1) TFEU and Articles 18 and 19 of Regulation No 659/1999 due to failure to propose appropriate measures
- The applicants submit in that regard that, when examining the 2012 EEG, the Commission should in any event have applied the procedure for existing aid in accordance with Article 108(1) TFEU and Articles 17-19 of Regulation No 659/1999 and should have proposed appropriate measures to Germany before opening the formal investigation procedure instead of exposing market participants to considerable economic risks due to the classification of the 2012 EEG as new, non-notified aid.
3. Third plea in law: Infringement of the right to be heard
- The applicants argue also that the Commission should have consulted them in any event before adopting a decision with such serious legal effects.
4. Fourth plea in law: Insufficient reasoning
- Lastly, the applicants claim that the opening decision is vitiated by a lack of reasoning in the essential passages.

<sup>(1)</sup> 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 2 May 2014 — *Wirtschaftsvereinigung Stahl and Others v Commission*

(Case T-285/14)

(2014/C 223/40)

*Language of the case: German*

#### Parties

*Applicants:* Wirtschaftsvereinigung Stahl (Düsseldorf, Germany), Benteler Steel/Tube GmbH (Paderborn), BGH Edelstahl Freital GmbH (Freital), BGH Edelstahl Siegen GmbH (Siegen), BGH Edelstahl Lippendorf GmbH (Lippendorf), Buderus Edelstahl Schmiedetechnik GmbH (Wetzlar), ESF Elbe-Stahlwerke Feralpi GmbH (Riesa), Friedr. Lohmann GmbH Werk für Spezial- & Edelstähle (Witten), Outokumpu Nirosta GmbH (Krefeld), Peiner Träger GmbH (Peine), ThyssenKrupp Steel Europe AG (Duisburg), ThyssenKrupp Rasselstein GmbH (Andernach), ThyssenKrupp Electrical Steel GmbH (Gelsenkirchen), Pruna Betreiber GmbH (Grünwald), ThyssenKrupp Gerlach GmbH (Homburg), ThyssenKrupp Federn und Stabilisatoren GmbH (Hagen), Salzgitter Mannesmann Rohr Sachsen GmbH (Zeithain), HSP Hoesch Spundwand und Profil GmbH (Dortmund), Salzgitter Mannesmann Grobblech GmbH (Mülheim an der Ruhr), Mülheim Pipecoatings GmbH (Mülheim an der Ruhr), Salzgitter Mannesmann Stainless Tubes Deutschland GmbH (Remscheid), Salzgitter Hydroforming GmbH & Co. KG (Crimmitschau), Salzgitter Mannesmann Line Pipe GmbH (Siegen), Ilsenburger Grobblech GmbH (Ilsenburg) (represented by: A. Reuter, C. Arhold, N. Wimmer, F.-A. Wesche, K. Kindereit, R. Busch, A. Hohler and T. Woltering, lawyers)

*Defendant:* European Commission

#### Form of order sought

The applicants claim that the Court should:

- annul the defendant's decision of 18 December 2013 to open the formal investigation procedure in State aid case SA.33995 (2013/C) (ex 2013/NN) — Support for renewable electricity and reduced EEG-surcharge for energy-intensive users, OJ 2014 C 37, p. 73;
  - join the present procedure and the procedure relating to Germany's action before the General Court, seeking the annulment of the contested decision (lodging of the application on 21 March 2014);
- in the alternative: order that access be made available to the file in the proceedings referred to relating to Germany's action;

— order the defendant to pay the costs.

### **Pleas in law and main arguments**

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

1. First plea in law: No advantage

— The applicants claim that the special compensation regime provided for in the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources, hereinafter referred to as EEG) does not involve an advantage for energy-intensive users in the steel industry in general and for applicants 2 to 24 in particular.

2. Second plea in law: No selective advantage

— The applicants also claim that there is a fortiori no selective advantage for the purpose of Article 107(1) TFEU for the applicants in the special compensation regime.

3. Third plea in law: No use of State resources

— In addition, the applicants maintain that the special compensation regime does not constitute support 'granted by a Member State or through State resources' within the meaning of Article 107(1) TFEU.

4. Fourth plea in law: No distortion of competition

— The applicants claim that the special compensation regime does not distort competition in the European Union.

5. Fifth plea in law: No effect on trade between the Member States

— The applicants further state that the special compensation regime also does not affect trade between Member States.

6. Sixth plea in law: A cessation or substantial reduction of the special compensation regime infringes the applicants' fundamental rights

— The applicants submit that not only would the limits of Article 107 TFEU clearly defined by the Court of Justice of the European Union be exceeded upon a classification of the special compensation regime as aid or a substantial reduction of the special compensation regime, but the fundamental requirement of substantive equity of charges would also be infringed. An abolition or substantial reduction of the special compensation regime would therefore also infringe the applicants' fundamental rights, particularly their rights under the Charter of Fundamental Rights of the European Union.

7. Seventh plea in law: the special compensation regime is covered by the Commission decision of 22 May 2002

— The applicants also claim that, by its decision of 22 May 2002, the Commission expressly stated that the EEG and its 'compensation regimes' did not fall to be categorised as aid. <sup>(1)</sup> That decision also covers the special compensation regime.

8. Eighth plea in law: Manifest error of assessment and insufficient preliminary examination

— The applicants also allege that the Commission did not adequately examine and therefore also did not realise that the exceptions for energy-intensive users are justified according to the aim, nature and scheme of the EEG and therefore did not constitute a selective advantage.

9. Ninth plea in law: Infringement of the right to be heard

— The applicants argue also that the Commission should have consulted them in any event before adopting a decision with such serious legal effects.

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<sup>(1)</sup> Commission letter of 22 May 2002, C(2002) 1887 fin./State aid NN 27/2000- Germany