The applicant further puts forward that it is obvious that the transfer of the NCHZ assets to Via Chem and later to the applicant cannot be considered an attempt to circumvent the Commission's recovery decision for two reasons. First, the case is so far from the typical circumvention case that even the Commission admits that it has no evidence of the intention to evade recovery. Second, it nevertheless comes to the conclusion that there is economic continuity, so that it can extend the recovery to the applicant. However, the Commission' conclusion follows a flawed analysis based on an incorrect interpretation of the individual criteria, a disregard for the burden of proof and a false understanding of the overall concept of economic continuity in State aid cases.

Finally, the applicant submits that the Commission's approach is economically destructive and unnecessary from a competition law perspective. According to the applicant, the Commission is trying to create new, much stricter case law, according to which the scope of the transaction shall be the decisive criterion, the sales price being at most an auxiliary criterion, if at all.

5. Fifth plea in law, in the alternative, infringement of Articles 107(1), 108(2) TFUE and Article 14(1) of the Procedural Regulation by not limiting the extension of the Recovery Decision to 60 % of the alleged State aid

6. Sixth plea in law, alleging an infringement of Article 296 TFUE by giving inadequate reasons with respect to the economic continuity

The applicant puts forward that it follows from the observations made with respect to the first plea that he Commission's reasoning is insufficient to enable the Court to conduct a judicial review of the contested decision, and that it is not possible for the applicant to understand the reasons that led the Commission to conclude on economic continuity.

Action brought on 12 March 2015 — Landeskreditbank Baden-Württemberg v ECB

(Case T-122/15)

(2015/C 178/18)

Language of the case: German

Parties

Applicant: Landeskreditbank Baden-Württemberg — Förderbank (Karlsruhe, Germany) (represented by: A. Glos, K. Lackhoff and M. Benzing, lawyers)

Defendant: European Central Bank

Form of order sought

The applicant claims that the Court should:

— annul the decision of the ECB of 5 January 2015 (ECB/SSM/15/1 — 0SK1ILSPWNVBNQWU0W18/3), by ordering the effects of the substituted decision of the ECB of 1 September 2014 (ECB/SSM/14/1 — 0SK1ILSPWNVBNQWU0W18/1) to be maintained;

— 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 five pleas in law.

1. First plea in law, alleging that the ECB applied an inappropriate criterion for the assessment of particular circumstances

— The applicant asserts that the ECB based its decision as to whether, despite satisfying the size criterion, the applicant was to be classified as a less significant entity on grounds of particular circumstances under the second subparagraph of Article 6(4) of Regulation (EU) No 1024/2013 ([1]) read in conjunction with Article 70(1) of Regulation (EU) No 468/2014 ([2]) on four different and mutually irreconcilable assessment criteria. Each of those criteria was in itself erroneous.

— The applicant further asserts that for the existence of particular circumstances under Article 70(1) of Regulation No 468/2014 it is decisive that there were 'specific and factual circumstances' that made the classification of an entity as significant, and thereby necessarily subject to the ECB's central supervision, 'inappropriate'. According to the applicant, the classification of an entity as significant merely on the basis of its size was 'inappropriate', within the meaning of Article 70(1) of Regulation No 468/2014, where such a classification was not necessary for the attainment of the objectives of Regulation No 1024/2013. Supervision by the competent national authorities with macroprudential supervision by the ECB would have sufficed.

2. Second plea in law, alleging manifest errors in the assessment of the facts of the case

— The applicant asserts that the ECB erred (i) since in view of the submissions made by the applicant at the hearing and in the proceedings before the Administrative Board of Review the classification of the applicant as a significant entity was not in any way necessary for the attainment of the objectives of Regulation No 1024/2013 and (ii) because the classification of the applicant as a less significant entity was also inconsistent with the basic principles of that regulation. The ECB's decision that particular circumstances did not exist was a manifest error.

3. Third plea in law, alleging an infringement of the obligation to state reasons

— The applicant asserts that the reasons for the contested decision were illogical and contradictory. The ECB relied on a total of four assessment criteria which bore no relation to one another and were mutually irreconcilable.

— The principal grounds for the contested decision cannot be extrapolated from the contested decision. On the contrary, the ECB's line of argumentation consisted in mere assertions and negations.

— Furthermore, the decision erroneously failed to take into consideration the applicant's submissions in the administrative proceedings. In particular, the ECB did not explain why the factual and legal arguments presented by the applicant were not sufficient to rebut the presumption laid down in the second subparagraph of Article 6(4) of Regulation No 1024/2013.

4. Fourth plea in law, alleging an *ultra vires* misuse of powers by failing to exercise discretion

— The applicant claims that the ECB breached its obligation in each individual case to exercise the discretion provided for in Article 6(4) of Regulation No 1024/2013 and Article 70 of Regulation No 468/2014. The ECB thereby misused its powers.

5. Fifth plea in law, alleging a breach of the obligation to assess and take into consideration all of the relevant circumstances of each individual case

— The applicant asserts that, in exercising the margin of discretion bestowed upon it, the ECB breached its duty to assess and take into consideration diligently and impartially all of the relevant facts and points of law of the case at issue. In particular, the ECB failed to evaluate all of the facts and points of law invoked by the applicant.

(1) Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ 2013 L 287, p. 63).

(2) Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (SSM Framework Regulation) (OJ 2014 L 141, p. 1).

Action brought on 30 March 2015 — Spain v Commission

(Case T-143/15)

(2015/C 178/19)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: M. Sampol Pucurull and M. García-Valdecasas Dorrego, Abogados del Estado)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul in part the Commission's implementing decision of 16 January 2015 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD), in so far as it excludes:

1. aid received by the Kingdom of Spain in relation to the Comunidad de Andalucía totalling EUR 3 586 250,48 plus EUR 1 866 977,31 (decoupled direct aid) in financial years 2009 and 2010,

2. expenditure incurred by the Kingdom of Spain in relation to the Comunidad de Castilla y León amounting to EUR 2 123 619,66 (EUR 1 479,90 euros + EUR 978 849,95 + EUR 12 597,37 + EUR 1 720,85 + EUR 1 096 710,18 + EUR 32 261,41) in respect of 'natural handicaps' and 'agri-environmental measures' in financial years 2010 and 2011; and

— order the Commission to pay the costs.

Pleas in law and main arguments

The Kingdom of Spain claims that the contested decision should be annulled on the following grounds:

1. The imposition of a flat-rate correction in the amount of EUR 5 453 227,79 (decoupled direct aids) is contrary to Article 27(1) of Commission Regulation (EC) No 796/2004, Article 31 of Council Regulation (EC) No 1290/2005 and Articles 3 and 52 of Regulation (EU) No 1306/2013, for two reasons:

— The Commission misinterpreted Article 27 of Regulation (EC) No 796/2004, given that the fact that the results of the random samples carried out in 2008 and 2009 were not as good as the results of the risk sample does not constitute an infringement of that article and, accordingly, does not constitute an infringement of EU law which excludes financing of agricultural expenditure under Article 31 of Regulation (EC) No 1290/2005 and Article 52 of Regulation (EU) No 1306/2013.