

3. Third plea in law, alleging infringement of the transparency of public procurement procedures, inasmuch as the defendant only published the result of the procedure in the *Official Journal* out of time and without including all the information prescribed by the EU Directive. ⁽³⁾
4. Fourth plea in law alleging that the defendant infringed the Directive on public procurement by failing to give notice of the time limit for review, thus limiting the possibility of review. ⁽⁴⁾

⁽¹⁾ Recitals 1 and 90 of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ 2014 L 94, p. 65).

⁽²⁾ Article 113 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ 2012 L 298, p. 1).

⁽³⁾ Article 50 of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ 2014 L 94, p. 65).

⁽⁴⁾ Annex V, Part D (point 16) of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ 2014 L 94, p. 65).

Action brought on 14 December 2017 — Luxembourg v Commission

(Case T-816/17)

(2018/C 072/49)

Language of the case: French

Parties

Applicant: Grand Duchy of Luxembourg (represented by: D. Holderer, acting as Agent, and D. Waelbroeck and A. Steichen, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- declare the present action admissible and well founded;
- principally, annul the Commission Decision of 4 October 2017 relating to State aid SA.38944 allegedly granted by Luxembourg to Amazon;
- alternatively, annul the Commission Decision of 4 October 2017 relating to State aid SA.38944 allegedly granted by Luxembourg to Amazon to the extent that it orders recovery of the aid;
- order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, which is divided into three parts, alleging infringement of Article 107 TFEU in that the Commission has failed to establish the existence of an advantage in favour of Amazon EU S.à r.l. ('LuxOpCo').
 - First part, alleging that the application of the tax ruling and its renewal in 2011 did not lead to any advantage being granted inasmuch as the royalty fee that a third party would have paid for a licence for intangible assets would have been greater than the fee paid by LuxOpCo to Amazon Europe Holding Technologies SCS ('LuxSCS') under the licence agreement. The applicant maintains that the Commission Decision of 4 October 2017 relating to State aid SA.38944 allegedly granted by Luxembourg to Amazon ('the contested decision') erred in finding that the royalty fee actually paid by LuxOpCo differs from the arm's-length price.

- Second part, alleging manifest errors of fact and of law that vitiate the analysis carried out in the contested decision relating to an alleged misapplication of the transactional net margin method in the context of the tax ruling, both in the choice of the tested party and in the application of the parameters of that method.
 - Third part, alleging that, on the contrary, it is the Commission's transfer pricing calculations in the contested decision that would lead to an outcome that deviates clearly from the arm's-length principle.
2. Second plea in law, which is divided into two parts, alleging infringement of Article 107 TFEU in that the Commission has failed to establish that the tax ruling at issue is selective in nature:
- First part, alleging that the Commission wrongly assumed that the tax ruling at issue was selective, whereas, according to the case-law, the Commission cannot conclude that there is an advantage in order to assume that that advantage is selective, but must, in the context of its analysis of selectivity, first define the relevant frame of reference, then identify a derogation from that frame of reference.
 - Second part, alleging that the Commission has failed to provide evidence of the alleged selectivity of the aid referred to in its alternative reasoning. Those two alternative findings of selectivity are manifestly flawed in that the Commission erred as to the frames of reference and, in any event, failed to establish that there was any derogation from them.
3. Third plea in law, alleging infringement of Articles 4 TFEU and 5 TFEU in that the Commission undertook covert fiscal harmonisation by imposing its own interpretation of the 'right' transfer pricing that LuxOpCo is deemed to have to pay to LuxSCS under the licence agreement at issue. In that regard, the applicant maintains that the Commission in fact exploited the rules on State aid in order to undertake covert fiscal harmonisation on transfer pricing, thereby infringing the exclusive competence of the Member States in the area of direct taxation.
4. Fourth plea in law, alleging infringement of Regulation 2015/1589 and of the rights of the defence, in that the Commission infringed the rights of the defence by adopting a decision that summarily rejected ex post documentation provided by Amazon and the central argument of which, namely an error in the choice of the tested party for the purposes of the transactional net margin method, could not be commented on in more detail by the Grand Duchy of Luxembourg or by Amazon.
5. Fifth plea in law, raised in the alternative, alleging infringement by the Commission of Article 16 of Regulation 2015/1589, in that the recovery of the aid is incompatible with the principle of legal certainty, taking into account the good faith of the Grand Duchy of Luxembourg in the application of transfer pricing and the fact that the new transfer pricing approach applied by the Commission in the contested decision could not have been foreseen.

Action brought on 18 December 2017 — Sierra v EUIPO

(Case T-819/17)

(2018/C 072/50)

Language of the case: Spanish

Parties

Applicant: Mercedes Sierra (Alicante, Spain) (represented by: E. Fontes Vila, lawyer)

Defendant: European Union Intellectual Property Office