

9. Ninth plea in law, alleging infringement of Article 14(1) and Article 7(5) of Regulation No 659/1999 in so far as the order for recovery and the obligation to desist contained in Article 4(1) and Article 4(4) respectively are contrary to the law on State aid

Recovery under Article 4(1) relates not to 'aid' but to DPAG's revenues from regulated stamp prices. Compliance with the order no longer to benefit cannot be achieved by means of a reduction in 'aid'. A reduction in the 'pension subsidy' would have no effect on the size of the 'comparative advantage'. To cease to benefit in accordance with Article 4(4) would require the amendment of price regulation, and thus encroaches upon the applicant's regulatory sovereignty.

10. Tenth plea in law, alleging infringement of Article 6 TEU, Article 41 of the Charter of Fundamental Rights of the European Union, Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the principle of good administration and Article 10(1) of Regulation No 659/1999, on account of the unreasonable length of the proceedings and inactivity on the part of the Commission

(¹) Case T-157/01 *Danske Busvognmænd v Commission* [2004] ECR II-917.

(²) Case C-379/98 *PreussenElektra* [2001] ECR I-2099.

(³) 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).

(⁴) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

Action brought on 29 March 2012 — Bayerische Motoren Werke v OHIM (ECO PRO)

(Case T-145/12)

(2012/C 165/49)

Language of the case: English

Parties

Applicant: Bayerische Motoren Werke AG (München, Germany) (represented by: C. Onken, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 18 January 2012 in case R 1418/2011-4;

— Order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'ECO PRO' for goods in classes 9 and 12 — International Registration (IR) No W 1059979

Decision of the Examiner: Refused protection of the International Registration designating the European Union.

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 7(1)(b) of Council Regulation No 207/2009, as the Board of Appeal wrongly assumed that the International Registration of the applicant's trademark was devoid of distinctive character within the meaning of this article.

Action brought on 30 March 2012 — Wünsche Handelsgesellschaft International v Commission

(Case T-147/12)

(2012/C 165/50)

Language of the case: German

Parties

Applicant: Wünsche Handelsgesellschaft International mbH & Co KG (Hamburg, Germany) (represented by: K. Landry and G. Schwendinger, lawyers)

Defendant: European Commission

Form of order sought

— Annul Commission Decision REM 02/09 of 16 September 2011 (C(2011) 6393 final);

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

Pleas in law and main arguments

The applicant seeks annulment of Commission Decision REM 02/09 of 16 September 2011 (C(2011) 6393 final) determining that remission of import duties is not justified in a particular case, which concerns imports by the applicant of preserved mushrooms of the genus *Agaricus* — country of origin, China — in 2004 and 2006.

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

1. Infringement of Article 220(2)(b) of the Customs Code

- The applicant is doubtful about the Commission's assessment that there was an error on the part of the German customs authorities in the present case.
- In any event, the applicant does not recognise the (alleged) error. The applicant, who acted in good faith and is experienced, cannot be accused of a lack of due care. In view of the complex legal position and the longstanding practice of the German authorities, the applicant can claim a legitimate expectation.

2. Infringement of Article 239 of the Customs Code

- The Commission made a procedural legal error in that, by means of a simple reference to refusal pursuant to Article 220(2)(b) of the Customs Code, it summarily also denied remission of import duties under Article 239 of the Customs Code, without any separate assessment.
- Furthermore, the Commission also committed a substantive legal error in failing to recognise that there are 'special circumstances' for the purposes of Article 239 of the Customs Code in the present case, and that the criteria for remission under that provision were satisfied.

3. Infringement of general legal principles

The applicant further claims that, in adopting the contested decision, the Commission infringed the primary-law principle of protection of legitimate expectations, the principle of proportionality, the principle of good administration and the principle of equal treatment.

Action brought on 4 April 2012 — Deutsche Post v Commission

(Case T-152/12)

(2012/C 165/51)

Language of the case: German

Parties

Applicant: Deutsche Post AG (Bonn, Germany) (represented by: J. Sedemund, T. Lübbig and M. Klasse, lawyers)

Defendant: European Commission

Forms of order sought

The applicant claims that the General Court should:

- annul Articles 1 and 2, as well as Articles 4 to 6, of the Decision of the European Commission of 25 January 2012 on Measure C 36/2007 (ex NN 25/2007) granted by Germany in favour of Deutsche Post AG (Commission Document No C(2012) 184 final);
- order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

The applicant raises a total of 13 pleas in law in support of its action:

- A. The applicant raises 10 pleas in law in support of its action for annulment of Article 1 and Articles 4 to 6 of the Commission Decision of 25 January 2012:

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

by reason of the incorrect classification, at variance with the 'Combus' case-law of the Court, ⁽¹⁾ of the partial financing by the State of outstanding pension commitments of a former State-owned enterprise as an element constituting aid;

Second plea in law: Breach of Article 108(1) TFEU and of Article 1(b)(i) of Regulation (EC) No 659/1999 ⁽²⁾

by reason of the incorrect classification of the partial financing by the State of outstanding pension commitments as 'new' aid;

Third plea in law: Breach of Article 107(1) TFEU

by reason of the improper treatment of the regulated charges as an element constituting aid, contrary to the 'PreussenElektra' case-law of the Court of Justice, ⁽³⁾ and of the objection of a mere (allegedly) inappropriate allocation of costs between two product groups as an element constituting aid;

Fourth plea in law: Errors of competence and assessment, in addition to infringement of the principle of non-discrimination and of the duty of genuine cooperation with Member States

by reason of the retrospective infringement of the national regulation of charges, despite a long-standing knowledge of that regulation and contrary to the Commission's entire decision-making practice to date;