

Pleas in law and main arguments

In support of the action, the applicant relies on one main plea in law, alleging:

- the European Union's liability for unlawful decisions of the European Commission consisting in:
 - (a) misinterpretation of Article 10(1) of Commission Regulation (EC) No 2216/2004 of 21 December 2004 for a standardised and secured system of registries pursuant to Directive 2003/87/EC of the European Parliament and of the Council and Decision No 280/2004/EC of the European Parliament and of the Council (OJ L 386, p. 1);
 - (b) a breach of Article 20 of Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, p. 32);
 - (c) breaches of several general principles of law (principles of proportionality and of protection of legitimate expectations, duty of care, right to an effective judicial protection in respect of property rights), when deciding not to disclose or allow disclosure of the location of stolen European Emission Allowances in the framework of the European Union Emissions Trading Scheme.

Action brought on 19 July 2012 — Spain v Commission**(Case T-319/12)**

(2012/C 287/60)

*Language of the case: Spanish***Parties**

Applicant: Kingdom of Spain (represented by: A. Rubio González)

Defendant: European Commission

Form of order sought

- Annul European Commission Decision C(2012) of 8 May 2012 concerning State Aid SA 22668 (C 8/2008 — ex NN 4/2008), granted by Spain to 'Ciudad de la Luz SA';
- 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. Incorrect application of the private investor test, since the Commission went beyond the bounds of its margin of assessment when carrying out its analysis.
2. Error in the assessment of the State aid on account of a failure to take into account actions in the tertiary part of the complex.
3. Failure of the contested decision to state reasons in so far as the Commission requires recovery of the aid granted to film producers and in so far as its analysis makes no mention of that alleged aid.
4. In the alternative, error in the analysis of the compatibility of the investment with the Guidelines on National Regional aid, since the Commission failed to consider whether the remaining aid complied with the private investor principle.
5. In the alternative, failure to state reasons and error in the analysis of the compatibility of the aid, in the light of the rules applicable to aid in the audiovisual sector, since the Commission failed to consider why the alleged aid was not intended for cultural purposes.

Action brought on 20 July 2012 — Ciudad de la Luz and Sociedad Proyectos Temáticos de la Comunidad Valenciana v Commission**(Case T-321/12)**

(2012/C 287/61)

*Language of the case: Spanish***Parties**

Applicants: Ciudad de la Luz, SA (Alicante, Spain) and Sociedad Proyectos Temáticos de la Comunidad Valenciana, SA (Alicante) (represented by: J. Buendía Sierra, N. Ruiz García and J. Belenguier Mula, lawyers, and M. Muñoz de Juan, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the General Court should:

- admit and uphold the grounds for annulment set out in their application;
- annul European Commission Decision C(2012) 3025 final of 8 May 2012 concerning State Aid SA. 22668 (C 8/2008 — ex NN 4/2008) granted by Spain to 'Ciudad de la Luz SA' ('CDL') and, in particular, Article 1(1) thereof in so far as it declares that the investment in CDL comprises elements of incompatible State aid, requiring its recovery;

- declare that the contested decision is non-existent or, alternatively, void, in particular Article 1(1) thereof in so far as it declares that certain producers which have filmed at CDL have received incompatible aid;
- consequently, annul the orders for recovery ordered by Article 2 of the contested decision;
- order the Commission to pay the costs of these proceedings.

Pleas in law and main arguments

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

1. Error of law in concluding that there was State aid in favour of CDL (misapplication of the private investor principle). Infringement of Articles 107(1) TFEU and 345 TFEU

The applicants submit that the Commission incorrectly analyses the private investor principle and is mistaken in its conclusion concerning the existence of State aid. The Generalitat Valenciana's investments in CDL occurred on two separate occasions — in 2000 and 2004 — and both investment decisions were adopted after the respective business plans, which established that the project was expected to be profitable, had been produced. In applying the private investor principle in this case, the Commission compares that project with the profitability of projects and operators which are not comparable due to their size, thereby emptying that principle of its content in breach of Articles 107(1) and 345 TFEU.

Similarly, the Commission refuses to take into account in its legal and economic analysis the existence, in addition to the film studio project, of the project to develop a commercial, leisure and hotel area on neighbouring land of the Sociedad Proyectos Temáticos de la Comunidad Valenciana ('SPTCV'). If both projects are taken into account, the profitability of the investment in CDL is even greater.

2. Error of law in the analysis of the compatibility of the CDL project and failure to state reasons

The applicants submit that the Commission refuses to take into consideration that because CDL is located in Alicante, the project was eligible for regional aid. Since that project is a large investment project, the Spanish authorities take the view that CDL was entitled to apply for regional aid with an intensity of approximately 36 %, which has not been contested by the Commission. Notwithstanding this, the Commission refuses to concede that when the private investor principle is applied to 64 % of the investment, the project is even more profitable.

In the alternative, the applicants submit that the investment by the Valencian authorities in the CDL film studio complex should be declared compatible, either in whole or in part, in accordance with Article 107(3)(d) TFEU.

The Commission does not give reasons for its conclusions that the aid for the construction of the CDL film studios is not necessary, proportionate and adequate, and, in its view, such aid cannot benefit — even in part — from the cultural compatibility exemption.

3. Error of law due to the absence of a decision and, in any event, a total absence of reasoning in relation to the incentives to film productions

In addition to finding that the investment in CDL constitutes incompatible aid, the Commission categorises any incentive awarded to film producers on condition that filming takes place at CDL as incompatible.

The contested decision devotes only a single paragraph to such alleged aid in which it simply declares that the latter is incompatible. The decision fails to (i) detail the measure at issue referred to, (ii) mention the information supplied to that effect by the Member State, (iii) examine whether or not the elements of aid are present, (iv) analyse the compatibility criteria, and (v) consider whether legitimate expectations arise.

The applicants submit, therefore, that the contested decision is non-existent or void on the ground of the failure to state reasons. In addition, since those incentives satisfied the conditions laid down in the 2001 Commission communication on aid to cinema, they ought to have been found compatible with Article 107(3)(d) TFEU.

Action brought on 16 July 2012 — Simca Europe v OHIM — PSA Peugeot Citroën (Simca)

(Case T-327/12)

(2012/C 287/62)

Language in which the application was lodged: German

Parties

Applicant: Simca Europe Ltd (Birmingham, United Kingdom) (represented by: N. Haberkamm, lawyer)

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

Other party to the proceedings before the Board of Appeal: PSA Peugeot Citroën GIE (Paris, France)

Form of order sought

The applicant claims that the Court should:

- annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 12 April 2012 in Case R 645/2011-1;
- order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to pay the costs, including the costs for the applicant's counsel.