

**Form of order sought**

The applicants claim that the Court should:

- annul the decision C(2014) 3192 final of 26 May 2014 issued in Case State aid SA.38517 (2014/NN) — Micula v Romania (ICSID arbitration award) ordering Romania to suspend any action which may lead to the execution or implementation of the award of 11 December 2013 rendered by an Arbitral Tribunal established under the auspices of the International Centre for Settlement of Investment Disputes in the case Ioan Micula, Viorel Micula and others v. Romania (ICSID Case No. ARB/05/20), as the Commission considers that the execution of the award constitutes unlawful State aid, until the Commission has taken a final decision on the compatibility of that State aid with the internal market;
- award the applicants the costs of the action.

**Pleas in law and main arguments**

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

1. First plea in law, alleging a lack of competence.

- EU law is not applicable to the case and the Commission lacks the competence to issue a decision under Article 11 (1) of Regulation n° 659/1999. The Commission's decision fails to acknowledge that Romania is obligated by international law to execute the ICSID award without delay and that Romania's international law obligations take primacy over EU law. The Commission's decision infringes Article 351(1) TFEU and Article 4(3) TEU, which recognise and protect Romania's obligations under the ICSID Convention and under the Sweden-Romania Bilateral Investment Treaty.

2. Second plea in law, alleging a manifest error of law and assessment.

- The Commission erred in law by wrongly categorising the execution of the ICSID award as a new State aid measure and violated the applicants' legitimate expectations. The Commission's entire decision is based on the incorrect assumption that the execution of the ICSID award constitutes State aid under EU law. The ICSID award neither gives an economic advantage to the applicants, nor does it constitute a selective measure, nor a voluntary measure that is imputable to Romania, nor does it distort or threaten to distort competition.

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**Action brought on 19 September 2014 — Bayerische Motoren Werke v Commission**

(Case T-671/14)

(2014/C 439/41)

*Language of the case: German*

**Parties**

*Applicant:* Bayerische Motoren Werke AG (Munich, Germany) (represented by: M. Rosenthal, G. Drauz and M. Schütte, lawyers)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the Court should:

- annul, in accordance with the fourth paragraph of Article 263 TFEU, the decision of 9 July 2014 in case SA.32009 (2011/C) in so far as it declares the amount by which the aid claimed of EUR 45 257 273 exceeds EUR 17 million (EUR 28 257 273) to be incompatible with the internal market;
- in the alternative: annul, in accordance with the fourth paragraph of Article 263 TFEU, the decision of 9 July 2014 in case SA.32009 (2011/C) in so far as it declares the amount of EUR 22,5 million which is exempt from notification in accordance with Article 6(2) of Regulation (EC) No 800/2008 <sup>(1)</sup> to be incompatible with the internal market;

- order the defendant to pay the costs of the proceedings in accordance with Article 87 of the Rules of Procedure of the General Court.

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

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

1. First plea in law: Infringement of Article 108(3) TFEU

- The applicant claims that, by infringing its obligation to conduct a diligent and impartial examination and thereby subsequently affirming, in a manifestly erroneous manner, the applicability in full of the communication on the detailed examination of large investment projects, the defendant infringed Article 108(3) TFEU.
- The applicant further claims that, if the applicant's market position had been correctly assessed, a detailed examination should not have occurred. The carrying out of the detailed examination without prior determination of the market position and the resulting discriminatory treatment of the applicant constituted a manifest error of assessment.

2. Second plea in law: Infringement of Article 107(3)(c) TFEU

- The applicant also argues that, by limiting, in a manifestly erroneous manner, the incentive effect and proportionality of the aid to the ex-ante estimated EUR 17 million amount of differential costs between the locations of Munich and Leipzig, the defendant infringed Article 107(3)(c) TFEU.
- In this respect, the applicant states that the automatic nature of the detailed examination by the defendant, determined by that amount of differential costs, constitutes a manifest error of assessment which ultimately prevented a proper exercise of discretion, in particular when examining the proportionality and effects of the aid.

3. Alternative plea in law: Infringement of Article 108(3) TFEU and Regulation No 800/2008

- The applicant claims, in the alternative, that, by prohibiting, in a manifestly erroneous manner, the Federal Republic of Germany from granting the applicant aid from the approved aid scheme of the Investitionszulagengesetz (Law on investment subsidies) in an amount which is below the notification threshold of EUR 22,5 million, the defendant infringed Article 108(3) TFEU and Regulation No 800/2008.
- In the applicant's opinion, that limitation of the amount of the aid below the notification threshold constitutes a manifest error of assessment by which the defendant exceeded its powers and unlawfully discriminated against the applicant in comparison with aid beneficiaries which received the non-notifiable amount of EUR 22,5 million.

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<sup>(1)</sup> Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation) (OJ 2008 L 214, p. 3).

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### **Action brought on 19 September 2014 — August Wolff and Remedia v Commission**

**(Case T-672/14)**

(2014/C 439/42)

*Language of the case: German*

### **Parties**

**Applicants:** Dr. August Wolff GmbH & Co. KG Arzneimittel (Bielefeld, Germany), Remedia d.o.o. (Zagreb, Croatia) (represented by: P. Klappich, C. Schmidt and P. Arbeiter, lawyers)

**Defendant:** European Commission