

2. The second plea in law is a claim of absence of a sufficient statement of reasons, contradiction and breach of the obligation to examine all relevant matters of fact and law with respect to the finding that the Arbitration Agreement set 'clear and objective parameters' which 'limited the discretion of the arbitrators' and had as a 'logical consequence' the finally determined electricity tariff.
3. The third plea in law is a claim of a manifest error of law in the interpretation and application of the principle of the prudent private investor and of Article 107(1) and Article 108(2) TFEU, as concerns the finding that the electricity tariff determined by the decision of the Arbitration Tribunal is 'the logical consequence of properly defined parameters in the Arbitration Agreement'.
4. The fourth plea in law is a claim of a manifest error of law in the interpretation and application of Articles 107 and 108 TFEU with respect to the finding that the Commission did not have to engage in complex economic assessments and a manifest error of law and a manifest error of assessment of the factual circumstances in so far as the Commission failed to examine crucial issues with respect to finding whether or not there was State Aid.
5. The fifth plea in law is a claim of a manifest error of law in the application of Article 107(1) and Article 108(2) TFEU, and a manifest error of assessment of the factual circumstances as concerns the application of the test of the prudent private market economy operator.
6. The sixth plea in law is a claim of a manifest error of law in the interpretation and application of Article 107(1) TFEU, infringement of the obligation to state sufficient reasons and a manifest error of assessment of the factual circumstances as regards the decision by the Commission not to further investigate the complaint made by DEI in 2012 pursuant to Article 108(2) TFEU, on the basis of the finding that that complaint 'has become without object' following the delivery of Decision 1/2013 of the Arbitration Tribunal.

Action brought on 2 July 2015 — Allergopharma v Commission

(Case T-354/15)

(2015/C 328/10)

Language of the case: German

Parties

Applicant: Allergopharma GmbH & Co. KG (Reinbek, Germany) (represented by: T. Müller-Ibold and F.-C. Laprévotte, lawyers)

Defendant: European Commission

Form of order sought

- Annul the Commission's decision of 27 March 2015 authorising an aid scheme for German pharmaceutical companies in financial difficulties through the exemptions from mandatory rebates (SA.34881 (2013/C) (ex 2013/NN) (ex 2012/CP));
- Order the European Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging errors of law, infringement of the Treaty and breach of the principles of non-discrimination and protection of legitimate expectations in consequence of the failure to have regard to the rescuing and restructuring guidelines ⁽¹⁾

- By the first plea in law, the applicant claims that the decision breaches the general principles of equal treatment and protection of legitimate expectations and errs in law in departing unlawfully from the binding Guidelines, even though the Guidelines make no provision for any such departure. The reasons given, that the exemptions are not aimed at keeping inefficient firms artificially on the market, are erroneous because (i) they distinguish between efficient and inefficient undertakings, even though the Guidelines do not do so, and (ii) the Commission's interpretation of 'efficiency' is incompatible with fundamental principles of the law on State aid.
2. Second plea in law, alleging errors of law, errors of fact and manifest errors of assessment in the application of Article 107(3)(c) TFEU
- By the second plea in law, the applicant claims that, even on the assumption that the Commission can measure the exemptions directly against Article 107(3)(c) TFEU, the decision is vitiated by a number of errors of law and manifest errors of assessment because it does not clearly define the objective of the aid and thus fails to explain why the aid is necessary for achieving the objective. In particular, in the applicant's view, the Commission has failed to take into account the fact that the authorised operating aid to firms in difficulty is, according to the case-law, fundamentally unsuited to achieving objectives of common interest, and that the exemptions have no incentive effect.
3. Third plea in law, alleging infringement of essential procedural safeguards and of the right to a hearing
- By the third plea in law, the applicant claims that — in breach of the right to a hearing and the procedural safeguards under Article 6(1) of Regulation (EC) No 659/1999 ⁽²⁾ — the disputed decision goes far beyond clarification of the issues raised in the initiation decision. First, the contested decision concludes that it is inappropriate to measure the aid against the Guidelines, whereas the initiation decision emphasises that that is 'the only legal basis for compatibility'. Secondly, the contested decision concludes that it is — exceptionally — appropriate for the aid to be measured against Article 107(3)(c) TFEU, even though there is nothing in the initiation decision that would indicate such a possibility. As a result the applicant was deprived of the opportunity to comment on those issues which, so far as the Commission was concerned, were ultimately decisive.
4. Fourth plea in law, alleging infringement of the obligation to state reasons
- By the fourth plea in law, the applicant claims that the contested decision is vitiated by serious defects of reasoning, in that the Commission failed to put forward any reasonable considerations in relation to numerous points. In particular, no reasonable grounds have been put forward (i) as regards the application of the derogation provided for by Article 107(3)(c) TFEU and (ii) as regards the exceptional circumstances that would justify the authorisation of operating aid as in the present case.

⁽¹⁾ Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ 2004 C 244, p. 2) ('the Guidelines').

⁽²⁾ 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).

Action brought on 14 July 2015 — DIMA Verwaltungs v OHIM (Shape of a container)

(Case T-383/15)

(2015/C 328/11)

Language of the case: German

Parties

Applicant: DIMA Verwaltungs GmbH (Hamburg, Germany) (represented by: T. Kerckhoff, lawyer)