



Reports of Cases

Judgment of the Court (Second Chamber) of 28 June 2018 — *Lowell Financial Services v Commission*

(Case C-219/16 P)¹

(Appeal — State aid — German tax legislation concerning the possibility of carrying certain losses forward to future tax years ('restructuring clause') — Decision declaring the aid scheme incompatible with the internal market — Action for annulment — Admissibility — Article 263, fourth paragraph, TFEU — Person individually concerned — Article 107(1) TFEU — Concept of 'State aid' — Condition relating to selectivity — Determination of the reference framework — Legal classification of the facts)

1. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Individual concern — Conditions — Commission decision prohibiting a sectoral aid scheme — Action brought by the beneficiaries of aid granted under that scheme — Admissibility — Conditions — Particular qualities or a factual situation characterising the applicant as compared with any other person*

(Arts 107(1) TFEU and 263, fourth para., TFEU)

(see paras 45-47)

2. *Appeal — Grounds — Incorrect assessment of the facts and evidence — Review by the Court of the findings of fact — Possible only where the clear sense of the evidence has been distorted — Review of the legal classification given to the facts of the dispute — Included*

(Art. 256 TFEU)

(see paras 79, 80)

3. *State aid — Definition — Selective nature of the measure — Measure conferring a tax advantage — Reference framework for determining the existence of an advantage — Criteria*

(Art. 107(1) TFEU)

(see paras 85, 86, 88-94, 106, 107)

¹ OJ C 222, 20.6.2016.

4. *State aid — Definition — Grant by the public authorities of favourable tax treatment to certain undertakings — Included — Advantages resulting from a general measure applicable without distinction to all economic operators — Not included*

(Art. 107(1) TFEU)

(see para. 87)

Operative part

The Court:

1. dismisses the cross-appeal;
2. sets aside points 2 and 3 of the operative part of the judgment of the General Court of the European Union of 4 February 2016, *GFKL Financial Services v Commission* (T-620/11, EU:T:2016:59);
3. annuls Commission Decision 2011/527/EU of 26 January 2011 on State aid C 7/10 (ex CP 250/09 and NN 5/10) implemented by Germany — Scheme for the carry-forward of tax losses in the case of restructuring of companies in difficulty (Sanierungsklausel);
4. orders the European Commission to bear its own costs and to pay the costs incurred by Lowell Financial Services GmbH in relation to the proceedings both at first instance and on appeal.