



Reports of Cases

Case T-170/16

Guardian Glass España, Central Vidriera, SLU v European Commission

(Actions for annulment — State aid — Tax advantages granted by a territorial entity within a Member State — Aid scheme declared to be incompatible with the internal market — Implementation of the decision — Obligation to examine the individual situation of the recipients — Commission's failure to adopt a position — Act not open to challenge — Inadmissibility)

Summary — Order of the General Court (First Chamber), 11 October 2017

1. *Actions for annulment — Actionable measures — Meaning — Measures producing binding legal effects — Assessment of those effects by reference to the substance of the measure — Consideration taken of the perception of the measure by its recipients — Not included*

(Art. 263, first para., TFEU)

2. *State aid — Examination by the Commission — Examination of an aid scheme as a whole — Lawfulness*

(Arts 107(3) TFEU and 108 TFEU)

3. *State aid — Recovery of unlawful aid — Obligation — Difficulties in implementing — Positions adopted by the Commission as to the implementing measures proposed by the Member State — Binding nature — None*

(Art. 108(2) TFEU)

4. *Actions for annulment — Actionable measures — Meaning — Measures producing binding legal effects — Consideration taken of the form of the measure — Limits*

(Art. 263, first para., TFEU)

1. In order to determine whether a measure produces binding legal effects within the meaning of the first paragraph of Article 263 TFEU, the substance of that measure must be examined. The existence of such effects must be established by looking at their substance, in particular on the perception that its recipients might have. By nature such perception has a subjective nature. The conditions for a successful action cannot depend of elements which may vary according to the authorities, the undertakings or individuals.

(see paras 68, 114, 115)

2. When the Commission is faced with an aid scheme, it is not required to examine the aid granted in individual cases on the basis of that scheme. It may confine itself to examining the general characteristics of the scheme in question without being required to examine each particular case in which it applies. Where the Commission rules in a general and abstract way on a scheme of State aid, which it declares incompatible with the internal market, and orders recovery of the amounts received under that scheme, it is for the Member State to verify the individual situation of each undertaking concerned by such a recovery operation.

(see paras 70, 71)

3. If a Member State encounters unforeseen or unforeseeable difficulties in executing the recovery decision it must notify the Commission. The Commission's letters to the national authorities in the context of the implementation of a Commission decision declaring an aid scheme unlawful and incompatible with the internal market and ordering the recovery of the aid concerned, but which does not identify the individual recipients of that aid and does not determine the specific amounts to be recovered, are devoid of any binding scope. In such a context, the Commission merely expresses its opinion as to whether that implementation is acceptable from the point of view of the European Union of the measure proposed by the Member State with regard to the difficulties faced by the latter.

(see paras 72, 74, 75)

4. The form in which an act or decision is adopted is in principle irrelevant to the right to challenge such acts or decisions by way of an action for annulment. Thus, it prevents the form or designation given to an act by its author from resulting in its escaping assessment of its legality in an action for annulment, even though it in fact has legal effects. However, the form of an act may be taken into account where this may help to identify its nature. By contrast, the form in which an act is adopted is in principle irrelevant for assessing the admissibility of an action for annulment.

In that regard, as regards a measure in the form of an undated, unsigned letter which does not have the Commission's header, it is clear that the measure is an informal document which is not set out in the form generally used by an institution to adopt a measure producing or intended to produce legal effects. The absence of binding legal effects produced by the contested measure, which derive from its substance, is confirmed by the form in which it was adopted.

(see paras 85-89, 92)