Pleas in law and main arguments

The pleas in law and main arguments are similar to those relied on in Case T-659/17, *Vallina Fonseca* v *SRB*.

Action brought on 9 October 2017 — Havenbedrijf Antwerpen and Maatschappij van de Brugse Zeehaven v Commission

(Case T-696/17)

(2017/C 412/53)

Language of the case: Dutch

Parties

Applicants: Havenbedrijf Antwerpen NV (Antwerp, Belgium) and Maatschappij van de Brugse Zeehaven NV (Zeebrugge, Belgium) (represented by: P. Wytinck, W. Panis and I. Letten, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— declare the application for annulment admissible;

— annul Decision C(2017) 5174 final of the European Commission of 27 July 2017 concerning state aid scheme No SA.38393 (2016/C, ex 2015/E) — Ports taxation in Belgium, implemented by Belgium;

— in the alternative, grant a transitional period until such time that the Commission has completed its investigation into the tax regime of the various ports in the EU, amounting, in any event, to one full year;

— order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Article 107 TFEU and Article 296 TFEU.

   — The Commission infringes Article 107 TFEU in so far as it incorrectly considers there to be a 'market' on which the port authorities provide their services.

   — The port authorities' main activities, namely providing access to ports and making lands available by means of domain concessions, involve activities that are non-economic in nature. At the very least, the Commission did not justify the opposite conclusion in an adequate manner, thereby infringing Article 296 TFEU.

2. Second plea in law, alleging infringement of Article 107 TFEU in so far as the Commission wrongly qualifies the measure as selective.

   Making the port authorities subject to the regime of tax on legal persons is not a derogation from the 'reference system' since the tax on legal persons is a reference system in itself. The liability of the port authorities to the tax on legal persons is explained by the fact that the management of the ports as a public domain is a public task which is not subject to corporation tax. The port authorities still perform, in essence, a public service, on a non-profit basis, in accordance with the conditions of the legislature and under administrative supervision.

3. Third plea in law, alleging infringement of Article 107 TFEU in so far as the derogation from the reference system is, in any event, justified.

Even if corporation tax were to be regarded as the Belgian reference system — which it is not — not subjecting the port authorities to it is justifiable. This follows from the overall coherence of the tax system and from the fact that the applicants are not in a factual and legal situation comparable to that of undertakings subject to corporation tax. Liability to corporation tax would, moreover, have a punitive effect.

4. Fourth plea in law, in the further alternative, concerning a request for a transitional period until such time that the Commission has completed its investigation into the tax regime of the various ports in the EU, amounting, in any event, to one full year.

— In the case against the Netherlands, the Commission gave the Netherlands legislature one full year in order for it to amend its legislation; the ports thus also had a year to prepare for the new situation. There is no justification for why the applicants should be granted a shorter period to adapt to the new situation.

— Prohibiting the measure in one Member State, when ports in other Member States can still enjoy its effects, in no way benefits the level playing field between the ports (not the port authorities). On the contrary, instead of eliminating inequality, it actually creates an unequal situation between the ports in the various Member States.

Action brought on 11 October 2017 — Poland v Commission

(Case T-699/17)

(2017/C 412/54)

Language of the case: Polish

Parties

Applicant: Republic of Poland (represented by: B. Majczyna, acting as Agent)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Commission Implementing Decision (EU) 2017/1442 of 31 July 2017 establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for large combustion plants (notified under document C(2017) 5225);

— order the European Commission to pay the costs of the proceedings.

Pleas in law and main arguments

In support of the action, the applicant invokes five pleas in law.

1. First plea in law, alleging that the Commission infringed Article 16(4) and (5) TEU, read in conjunction with Article 3(2) and (3) of Protocol No 36 on transitional provisions, annexed to the TEU and the TFEU, by using an unsuitable method of calculating the qualified majority when adopting the contested decision.

2. Second plea in law, alleging that the Commission infringed Article 3(10) and (13) of Directive 2010/75/EU, read in conjunction with Annex III to that directive, as well as Implementing Decision 2012/119/EU, by establishing the BAT-AELs (associated emission levels) on the basis of inaccurate and unrepresentative data.

3. Third plea in law, alleging that the Commission infringed the principle of proportionality (Article 5(4) TEU, read in conjunction with Article 191(2) TFEU), by establishing excessively high BAT-AELs which are not suitable for or commensurate with achieving the intended benefits and aims, and also that it failed to carry out an impact assessment in relation to the contested decision.