



Reports of Cases

Case T-491/17

Istituzione pubblica di assistenza e beneficenza ‘Opere Pie d’Onigo’

v

European Commission

Order of the General Court (Second Chamber), 24 September 2019

(Action for annulment — State aid — Aid scheme established by Italy for certain providers of socio-sanitary services — Costs associated with staff absences in respect of maternity and care provided to dependent family members — Contributions paid by the State to private undertakings — Decision not to raise any objections — No placement in an unfavourable competitive position — Lack of direct concern — Inadmissibility)

Action for annulment — Natural or legal persons — Regulatory acts — Acts not entailing implementing measures and concerning the applicant directly — Concept of direct concern — Criteria — Decision of the Commission finding no State aid — Action brought by an entity who is a competitor of the recipient undertaking — Competing entity not demonstrating that its right not to be subject to distorted competition has been directly affected — Inadmissibility

(Art. 263, fourth para., TFEU)

(see paragraphs 21-36)

Résumé

In the order in *Opere Pie d’Onigo v Commission* (T-491/17), delivered on 24 September 2019, the General Court dismissed as inadmissible the action for annulment brought by Istituzione pubblica di assistenza e beneficenza ‘Opere Pie d’Onigo’ (‘OPO’) against a decision of the European Commission stating that Italian legislation which excludes public autonomous non-profit entities from the insurance-based social security scheme does not constitute a State aid measure for private providers of socio-sanitary services who benefit from that scheme.¹

OPO is an Italian public autonomous non-profit entity providing socio-sanitary assistance to, inter alia, the elderly and persons with disabilities. In a complaint to the Commission, OPO complained of unequal treatment between public and private providers of social services in Italy in so far as only the latter benefit from the insurance-based social security scheme. In that regard, OPO complained of both unequal treatment of public and private providers of social services in so far as concerns the coverage of certain services granted to employees and the fact that the Italian State classed it as a public rather than a private entity. By the contested decision, the Commission found, however, that the national measures referred to in the complaint did not constitute State aid within the meaning of Article 107(1) TFEU.

¹ Decision C(2017) 1939 final of 27 March 2017 on State aid SA.38825 ‘Alleged State aid for private providers of socio-sanitary services’ (OJ 2017 C 219, p. 1).

OPO's action for annulment against that decision of the Commission has been dismissed as inadmissible on the ground that OPO does not have *locus standi*.

In that regard, the Court began by recalling that, under the last clause of the fourth paragraph of Article 263 TFEU, any natural or legal person may institute proceedings against regulatory acts of direct concern to them which do not entail implementing measures. As regards the requirement of direct concern, the Court emphasised, in addition, that this requires two cumulative criteria to be met, namely, first, the contested measure must directly affect the legal situation of the individual and, second, it must leave no discretion to its addressees who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from the EU rules alone without the application of other intermediate rules.

Given that the condition of direct concern requires the contested measure to produce effects directly on the applicant's legal situation, the Court next verified whether OPO had explained the reasons why the contested decision was liable to place it in an unfavourable competitive position and thus to produce effects on its legal situation. However, as OPO had failed to adequately explain those reasons, the Court concluded that the requirement of direct concern was not satisfied in the present case. As a result, the Court dismissed the action for annulment in its entirety as inadmissible.