

B. Substance

The first ground of appeal alleges formal illegality on the grounds of failure to provide adequate reasons. No legal, textual or jurisprudential basis is given in the decision of 21 September 2016, with the result that, merely from reading it, Alex SCI, represented by its managing director, does not understand that decision. To a high degree lacking adequate legal and factual reasoning, the decision is vitiated by formal illegality.

The second ground of appeal alleges substantive illegality (existence of State aid and lack of notification). The Communauté d'Agglomération Côte-basque — Adour ('CABAB') sought, as part of its economic strategy, to develop the 'Technocité' site in Bayonne in order to establish a specialised platform in the field of aviation. For that purpose, it requested financing from FEDER, the French State, the Regional Council of Aquitaine and the General Council of Pyrénées-Atlantiques in order for them to co-finance its project through the payment, from each of them, of the sum of EUR 1 000 000.

On the one hand, all the constituent elements of State aid being present, those payments constitute non-notified State aid, contrary to Article 108 TFEU.

On the other hand, those payments are incompatible with the common market. The Technocité project is in fact an industrial and tertiary platform specialised in the development of the most advanced technologies in the fields of aviation, space and embedded systems. That sector is eminently open to competition. The aid is therefore contrary to Article 107 TFEU.

Last, as regards the failure to perform the aid payment agreements, it must be noted that the purpose of those agreements is to finance a project of a 'Technocité aviation hub', for developing the site and making it 'a platform specialised in the research and development of the most advanced technologies in the fields of aviation, space and embedded systems'. The Technocité zone covers all types of activities, which are carried out by unrelated companies such as Fidal, Avantis, Decra, Sepa, Trescal, KPMG, Capgemini..., that is to say, companies involved in fields that do not fall within the sphere of aviation.

In short, the State aid must be annulled and the sums repaid (see, inter alia, Regulations No 734/2013 ⁽¹⁾ and No 2988/95, ⁽²⁾ Article 4(1) and (4); French Council of State (CE), 2 June 1992, Rec. p. 165; CE, 6 November 1998, Rec. p. 397; Court of Justice, 11 July 1996, SFEI, Case C-39/94).

⁽¹⁾ Council Regulation (EU) No 734/2013 of 22 July 2013 amending Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the Treaty (OJ 2013 L 204, p. 15).

⁽²⁾ Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests (OJ 1995 L 312, p. 1).

Appeal brought on 5 January 2018 by Alfamicro — Sistemas de computadores, Sociedade Unipessoal, Lda. against the judgment delivered by the General Court (Second Chamber) on 14 November 2017 in Case T-831/14 Alfamicro v Commission

(Case C-14/18 P)

(2018/C 072/38)

Language of the case: Portuguese

Parties

Appellant: Alfamicro — Sistemas de computadores, Sociedade Unipessoal, Lda. (represented by: G. Gentil Anastácio and D. Pirra Xarepe, advogados)

Other party to the proceedings: European Commission

Form of order sought

— Set aside the judgment of the General Court of 14 November 2017 in Case T-831/14;

- refer the case back to the General Court for judgment pursuant to Article 263 TFEU;
- order the European Commission to pay all of the costs.

Pleas in law and main arguments

- Alfamicro disputes the ruling of the General Court dismissing the action brought by Alfamicro and ordering it to pay to the European Commission the sum of EUR 277 849,93, together with interest accruing at the daily rate of EUR 26,88 until final payment. Alfamicro submits that the General Court should have ruled on the action on the basis of Article 263 TFEU, and not on the basis of Article 272 TFEU. In addition, Alfamicro submits that, in its decision, which is administrative in nature, the Commission, with the acceptance of the General Court, did not observe the principles of proportionality, good faith and legal certainty.
 - Alfamicro submits that both the analysis and the context of the Commission's letter of 28 October 2014 show that that letter constitutes a decision-making, administrative act, that is to say, an administrative decision. The terms in which it is drafted, the fact that it is based on an audit of the Court of Auditors, the fact that the Commission extrapolated the conclusions of the audit to all other agreements to which the appellant is a party and the adjustments made by the Commission all point to this being an administrative decision. The judgment of the General Court, which reflects the Court's opinion that the action brought should be classified as a declarative action and not an action challenging an administrative decision, seriously limits the appellant's rights of defence. In addition, Alfamicro submits that the General Court seriously infringed the principle of the equality of the parties and the principle of contractual balance.
 - By reducing the grant agreed with the appellant by more than 93 %, the Commission did not take appropriate measures, as was required by the grant agreement, and thus infringed the principle of proportionality. By accepting those actions of the Commission, the General Court fails to observe, and indeed infringes, the principle of proportionality. Moreover, where the Commission is required to take appropriate measures, but only takes inappropriate, arbitrary measures, then there is no legal certainty. By accepting those actions of the Commission, the General Court also fails to observe the principle of legal certainty.
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