

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

1. First plea in law, alleging infringement of Regulation No 1049/2001, Article 15(3) TFEU and Article 42 of the Charter of Fundamental Rights of the European Union. More specifically, the applicant submits that public access to the documents of the institutions is, in principle, the legal rule and the possibility of refusal is the exception. However, the exceptions provided for by Article 4 of Regulation No 1049/2001 and relied on by the European External Action Service cannot justify refusal of access to the documents, on the ground that the conditions set out in that article are not met.
2. Second plea in law, alleging infringement of Article 296 TFEU and Article 41 of the Charter of Fundamental Rights of the European Union, in that the contested decisions are vitiated by a failure to state reasons or by an inadequate statement of reasons.
3. Third plea in law, alleging breach of the principle of proportionality.

Action brought on 27 November 2018 — ZY v European Commission

(Case T-693/18)

(2019/C 35/34)

Language of the case: German

Parties

Applicant: ZY (represented by: N. Voß and D. Fouquet, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul in its entirety Commission Decision C(2018) 3166 final SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 in respect of the years 2012 and 2013;
- in the alternative, annul Commission Decision C(2018) 3166 final SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018, in so far as it orders, with respect to baseload consumers with at least 7 000 user hours per year, the repayment of 20 %, with respect to baseload consumers with at least 7 500 user hours per year, the repayment of 15 %, and with respect to baseload consumers with at least 8 000 user hours per year, the repayment of 10 % of the published network charges;
- order the defendant to pay the costs of the proceedings, including legal and travel costs.

Pleas in law and main arguments

In support of the action, the applicant relies on three pleas in law.

1. First plea in law, alleging a wrongful presumption of the existence of State aid for the purposes of Article 107(1) TFEU;

In the context of the first plea in law, it is claimed that the defendant erred in law during its examination of the contested exemption from network charges by presuming the use of State resources.

In addition, during the examination of the ‘selectivity’ criterion, the reference system was incorrectly and incompletely identified.

2. Second plea in law, alleging an infringement of the principle of equal treatment;

In the context of the second plea in law, it is alleged that, the defendant's decision only provided for the obligation to make repayments for baseload consumers who were entirely exempted from network charges in the years 2012 and 2013. As a result, those baseload consumers were unequally treated and unfairly disadvantaged vis-à-vis baseload consumers, who, over the same period, enjoyed flat-rate network charge reductions and in respect of which there were no obligations to make repayments.

3. Third plea in law, alleging an infringement of the general principle of the protection of legitimate expectations;

In the context of the third plea in law, it is claimed that, in view of the particular circumstances, the applicant could rely on its right to retain the awarded special network charges.

Action brought on 17 November 2018 — DEI v Commission

(Case T-694/18)

(2019/C 35/35)

Language of the case: Greek

Parties

Applicant: Dimosia Epicheirisi Ilektrismou AE (DEI) (Athens, Greece) (represented by: E. Bourtzalas, A. Iliadou and C. Synodinos, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

- annul the decision of 30 July 2018 of the European Commission (C(2018) 4947 final in Case SA.50152) to the extent that the Commission decides not to raise objections to the aid scheme under the new Transitory Flexibility Remuneration Mechanism ('the new TFRM') which was notified by Greece, based on the conclusion that that scheme is compatible with the internal market pursuant to Article 107(3)(c) TFEU, and
- order the European Commission to pay DEI's costs.

Pleas in law and main arguments

In support of the action, the applicant relies on two pleas in law.

1. According to the first plea in law, the Contested Decision is vitiated by a manifest error of assessment of the law and of the facts and a failure to comply with essential procedural requirements with respect to the interpretation and application of Article 108(2) TFEU, to the extent that the Commission did not initiate the formal investigation procedure.
 2. According to the second plea in law, the Contested Decision is vitiated by a manifest error of assessment of the law and of the facts, with respect to the judgment that the new Transitory Flexibility Remuneration Mechanism satisfies the criteria of the Guidelines on State aid for environmental protection and energy (2014-2020) for the assessment of the compatibility of the aid with the internal market pursuant to Article 107(3)(c) TFEU and in particular the criteria of necessity, proportionality, appropriateness, incentive effect and avoidance of undue negative effects on competition.
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