

Pleas in law

- infringement of Article 42(2) of Council Regulation (EC) No 207/2009;
- infringement of Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 15 November 2019 — Tirreno Power v Commission**(Case T-793/19)**

(2020/C 10/62)

*Language of the case: Italian***Parties**

Applicant: Tirreno Power SpA (Rome, Italy) (represented by: A. Clarizia, T. Ferrario, M. Vasari, P. Ziotti and M. Pagliarulo, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul the contested decision by which the Commission decided not to raise objections to the 'Modification of the Italian capacity mechanism: Introduction of environmental requirements', State Aid SA.53821 (2019/N);
- order the defendant to pay the costs incurred by the applicant in the present proceedings.

Pleas in law and main arguments

By its action, the applicant seeks the annulment of Decision C(2019) 4509 final of 14 June 2019 by which the European Commission, notified by the Italian State of amendments to the mechanism to remunerate electricity generation capacity ('market-wide capacity mechanism') authorised by Decision C(2018) 617 final of 7 February 2018 and not yet implemented, decided not to raise objections to the new notified measure, finding it to be compatible with the internal market pursuant to Article 107(3)(c) TFEU, without carrying out an appropriate assessment of the amendments made to the previously authorised measure.

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

1. First plea in law, alleging infringement of its procedural rights arising under Article 108(2) TFEU on account of not having been asked — in the context of a formal investigation procedure, which was not initiated in this case — to submit its observations regarding the intention to increase the number of participants in the market-wide capacity mechanism by including in the concept of 'new capacity', alongside the new production units for which all building and operating permits have already been issued, new production units which have merely initiated the administrative procedures for the issuing of such permits.
 - The applicant claims in this regard that the decision is vitiated by a manifest failure to investigate adequately and by a failure to observe the principle of proportionality, in so far as the Commission did not properly assess the effects that those amendments to the scheme as approved in 2018 would have on the activity of the existing installations.

2. Second plea in law, alleging failure to investigate adequately and failure to state adequate reasons.

- The applicant claims in this regard that the Commission failed to carry out any examination of the additional aspects of the notified rules which amend the previously authorised scheme, aspects which have a major impact on the system and which are capable of significantly affecting the activities of the operators participating in the market-wide capacity mechanism.

Action brought on 15 November 2019 — Set v Commission

(Case T-794/19)

(2020/C 10/63)

Language of the case: Italian

Parties

Applicant: Set SpA (Milan, Italy) (represented by: N. Aicardi, T. Ferrario, and M. Vasari, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul the contested decision by which the Commission decided not to raise objections to the 'Modification of the Italian capacity mechanism: Introduction of environmental requirements', State Aid SA.53821 (2019/N);
- order the defendant to pay the costs incurred by the applicant in the present proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law, alleging infringement of Article 108(2) TFEU, in accordance with the provisions of Articles 4 and 6 of Regulation (EU) 2015/1589 ⁽¹⁾ laying down detailed rules for the application of the formal investigation procedure, in the context of the assessment, by the Commission, of the compatibility of the notified measure with the internal market.

- In this regard the applicant highlights the issues connected to and the effects resulting from the opening up of the market-wide capacity mechanism to new, unauthorised production units, in respect of which the Commission failed to carry out an adequate assessment, noting that further aspects of the rules were amended in respect of which the Commission nonetheless either failed to carry out an assessment or carried out an incorrect assessment.

⁽¹⁾ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ 2015 L 248, p. 9).
