

Action brought on 23 June 2020 — KO v Commission**(Case T-389/20)**

(2020/C 279/59)

*Language of the case: English***Parties***Applicant:* KO (represented by: S. Rodrigues and A. Champetier, lawyers)*Defendant:* European Commission**Form of order sought**

The applicant claims that the Court should:

- annul the decision of 18 October 2019 by which PMO decided not to grant the applicant the benefit of the expatriation allowance, along with, if necessary, the decision of 20 March 2020 by which the defendant rejected the complaint under Article 90(2) of the Staff Regulations lodged by the applicant; and
- order that the defendant pays all the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging a violation of Article 69 of the Staff Regulations and of Article 4(1) and (2) of Annex VII to the Staff Regulations.
2. Second plea in law, alleging breach of the principle of good administration and duty of care.

Action brought on 17 June 2020 — Scandlines Danmark and Scandlines Deutschland v Commission**(Case T-390/20)**

(2020/C 279/60)

*Language of the case: English***Parties***Applicants:* Scandlines Danmark ApS (Copenhagen, Denmark), Scandlines Deutschland GmbH (Hamburg, Germany) (represented by: L. Sandberg-Mørch, lawyer)*Defendant:* European Commission**Form of order sought**

The applicants claim that the Court should:

- annul the European Commission's decision of 20 March 2020 on State aid SA.39078 — 2019/C (ex 2014/N) which Denmark implemented for Femern A/S for the planning and construction of the Fehmarn Fixed Link between Denmark and Germany;
- order the Commission to pay the applicant's costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission infringed Article 107(1) TFEU and Article 1(d) and (e) of Council Regulation (EU) 2015/1589, ⁽¹⁾ by classifying (i) all State guarantees and State loans granted under the Construction Act as one single ad hoc aid; and (ii) a capital injection and all State guarantees and State loans granted under the Planning Act as another single ad hoc aid, whereas each State loan and State guarantee should constitute a separate ad hoc aid measure notified individually to the Commission when the terms of each State loan and State guarantee are agreed between Femern A/S and the Danish authorities.
2. Second plea in law, alleging that the Commission infringed Article 107(3)(b) TFEU and the IPCEI Communication, ⁽²⁾ by committing errors of law and manifest errors of assessment by deeming the aid to be compatible with the internal market. This plea is divided into four sub-pleas:
 - first, the applicant argues that the Commission has erred by finding that the Fixed Link is in the European interest;
 - second, the Commission has erred by finding that the aid is necessary, as the aid has no incentive effect and does not satisfy the requirements for the counterfactual scenario and the existence of alternative projects set out in the IPCEI Communication. Also, the Commission has erred in the contested decision by relying on an erroneously low IRR, as it calculated it on the basis of a very short lifetime of the project of 40 years, which does not correspond to the true lifetime of the infrastructure, i.e., the period during which Femern A/S will be able to economically exploit the Fixed Link;
 - third, the Commission has erred by holding that the aid is proportionate, as the aid is unlimited in time. The Commission also committed a number of manifest errors in the funding gap analysis. The Commission has erroneously relied on the above very short lifetime of the project, which has resulted in a higher proportion of costs compared to the revenues from the operation of the Fixed Link; the Commission has underestimated the projected revenues of Femern A/S and overestimated the projected costs by including in particular operating costs in the funding gap calculation. Finally, the Commission erroneously concludes that the aid element consists in the interest rate paid by Femern A/S to the Danish State, whereas, due to the fact that no private operator was willing to invest in the project without significant State aid, the aid element consists of the entire amount of the State loans and the amounts of the loans covered by the State guarantees;
 - fourth, the Commission has erred by concluding that the aid does not cause an undue distortion of competition, as the aid leads to the creation of a dominant position for Femern A/S in the relevant market, it creates overcapacity, and allows Femern A/S to use below-cost pricing. Finally, the Commission disregarded the fact that the aid is used for downgrading the access to the applicant's harbour in Germany. The Commission failed to acknowledge that these negative effects outweigh any positive effects created by the aid.

⁽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).

⁽²⁾ Communication from the Commission — Criteria for the analysis of the compatibility with the internal market of State aid to promote the execution of important projects of common European interest (OJ 2014 C 188, p. 4).

Action brought on 17 June 2020 — Stena Line Scandinavia v Commission

(Case T-391/20)

(2020/C 279/61)

Language of the case: English

Parties

Applicant: Stena Line Scandinavia AB (Göteborg, Sweden) (represented by: L. Sandberg-Mørch, lawyer)

Defendant: European Commission