

2. Second ground of appeal: incorrect application of Article 76 (d) of the Rules of Procedure of the General Court

The General Court's finding that the application did not fulfil the requirements of Article 76 (d) of the Rules of Procedure of the General Court is erroneous in law. The General Court overstretches the requirements for the substantiation of an action pursuant to that article.

In particular, contrary to the General Court's assumption, an adequate defence for the Commission was possible, and it was also possible for the General Court to rule on the action. This is especially so, because the Commission had already accepted the claims made by the applicant.

Furthermore, the application was not vague and unspecific as regards the amounts claimed by the applicant.

In addition, contrary to the General Court's finding, the action did not lack clarity in its entirety; there especially was no 'inconsistency' between the legal basis relied on and the arguments put forward.

Appeal brought on 19 November 2021 by Naturgy Energy Group, S.A, formerly Gas Natural SDG, S. A. against the judgment of the General Court (Seventh Chamber) delivered on 8 September 2021 in Case T- 328/18, Naturgy Energy Group v Commission

(Case C-698/21 P)

(2022/C 73/17)

Language of the case: Spanish

Parties

Appellant: Naturgy Energy Group, S.A., formerly Gas Natural SDG, S.A. (represented by: F. González Díaz and J. Blanco Carol, lawyers)

Other parties to the proceedings: European Commission, EDP España, S.A., Viesgo Producción, S.L., successor in title to Viesgo Generación, S.L.

Form of order sought

The appellant claims that the Court of Justice should:

- set aside the judgment of the General Court of 8 September 2021 in Case T-328/18, *Naturgy Energy Group v Commission*;
- give final judgment in the matter, without referring the case back to the General Court as permitted by Article 61 of the Statute of the Court of Justice, by annulling Decision C(2017) 7733 final of 27 November 2017 concerning State Aid SA.47912 (2017/NN) ⁽¹⁾ — Spain; Environmental incentive in favour of coal-fired power plants;
- order the Commission to pay the costs in both the present proceedings and in the proceedings before the General Court.

Pleas in law and main arguments

In support of its appeal, the appellant relies on the following two grounds of appeal:

1. First ground of appeal, alleging an error of law in the review of the statement of reasons of the decision at issue with respect to the selective nature of the measure at issue.

Naturgy submits that the General Court's examination of the reasoning for the decision at issue with respect to the selectivity of the measure at issue is vitiated by an error of law.

In summary, Naturgy submits that it is impossible to conclude that the statement of reasons for the initiation decision is lawful when it neither refers to the comparability analysis required by the case-law to justify the selective nature of aid, nor includes, even summarily, a statement, albeit preliminary, of the reasons why, by virtue of that comparability analysis, the measure at issue is selective. The General Court cannot lawfully rely on the provisional nature of the initiation decision in order to apply an incorrect standard of reasoning. In particular, in view of the fact that the initiation decision concerns a measure which is in the process of being implemented and which therefore has significant legal effects in relation to its beneficiaries, the General Court should have required the Commission to state reasons in accordance with the standards laid down by the case-law on selectivity, even if those reasons were brief and provisional.

2. Second ground of appeal alleging an error in law in the review of the application of Article 107(1) TFEU in relation to the selective nature of the measure at issue.

Naturgy submits that the conclusion of the General Court's examination of the characterisation of the measure at issue as selective carried out by the Commission is vitiated by errors of law. Naturgy submits that the General Court not only erred in law by considering that the legal criteria for reviewing the selective nature of a measure would be different depending on whether the measure at issue was analysed before or after the initiation of the formal investigation procedure, but also erred in law by reversing the burden of proof and failing to find that the Commission erred by concluding, on the basis of the reasoning of the initiation decision, that the measure at issue is selective and/or by failing to establish the selective nature of the measure in accordance with the law.

⁽¹⁾ OJ 2018 C 80, p. 20.

Request for a preliminary ruling from the Corte costituzionale (Italy) lodged on 22 November 2021 — E.D.L.

(Case C-699/21)

(2022/C 73/18)

Language of the case: Italian

Referring court

Corte costituzionale

Party to the main proceedings

E.D.L.

Question referred

Must Article 1(3) of Council Framework Decision 2002/584/JHA on the European arrest warrant, ⁽¹⁾ examined in the light of Articles 3, 4 and 35 of the Charter of Fundamental Rights of the European Union, be interpreted as meaning that, where it considers that the surrender of a person suffering from a serious chronic and potentially irreversible disease may expose that person to the risk of suffering serious harm to his or her health, the executing judicial authority must request that the issuing judicial authority provide information enabling the existence of such a risk to be ruled out, and must refuse to surrender the person in question if it does not obtain assurances to that effect within a reasonable period of time?

⁽¹⁾ Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1).

Request for a preliminary ruling from the Corte costituzionale (Italy) lodged on 22 November 2021 — O.G.

(Case C-700/21)

(2022/C 73/19)

Language of the case: Italian

Referring court

Corte costituzionale