

Pleas in law and main arguments

In support of the appeal, the appellant relies on two pleas in law.

1. First plea, alleging absolute failure to state reasons concerning the claim for damages.

— The following are alleged in this regard: failure to conduct a proper investigation, distortion of the facts, incorrect and unreasonable interpretation and application of the rules of law relating to the incurring of Aquilian liability on the part of the institutions of the European Union, of the concept of the duty to state reasons incumbent on all European Union institutions and the European Union judicature and of the concept of unlawful conduct on the part of a European Union institution.

2. Second plea, alleging that the ruling of the court at first instance on costs was unlawful.

— It is submitted in particular in this connection that an order that a party to proceedings reimburse costs to the Civil Service Tribunal pursuant to Article 94 of the Rules of Procedure of that court can be justified only on the basis of facts closely connected with the case in question and not on the basis of alleged conduct on the part of that party in other cases.

Action brought on 9 June 2011 — Portovesme v Commission

(Case T-291/11)

(2011/C 232/63)

Language of the case: Italian

Parties

Applicant: Portovesme Srl (Rome, Italy) (represented by: F. Ciulli, G. Dore, M. Liberati and A. Vinci, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- (1) Pursuant to Article 267 TFEU, declare that the decision of the European Commission of 23 February 2011 relating to State aid No C 38/B/2004 (ex NN 58/2004) and No C 13/2006 (ex N 587/2005) implemented by Italy in favour of, inter alia, the applicant is unlawful and, accordingly, annul the decision in its entirety or in so far as is reasonable;
- (2) in the alternative and only in the unlikely event that the form of order sought in paragraph 1 is not granted, declare that the decision in the provision ordering that the aid be recovered is unlawful on the basis that it is contrary to the general principle of the protection of legitimate expectations;

- (3) order the defendant to pay the costs and that the right be reserved to bring a separate action for damages.

Pleas in law and main arguments

In support of the action, the applicant relies on 11 pleas in law.

1. First plea in law, alleging infringement of the principle of legal certainty and the principle of the protection of legitimate expectations and infringement of Articles 4, 7, 10 and 14 of Regulation 659/1999. ⁽¹⁾

Arguments in support of the plea: the decision was adopted almost six and a half years after the formal investigation procedure had been initiated.

2. Second plea in law, alleging an incorrect and/or incomplete account of the legal and regulatory reference framework and consequent breach of the duty of due diligence and impartiality.

Arguments in support of the plea: the decision declaring the aid incompatible is based on an incorrect and incomplete account of the matters of fact and law and consequently infringes of the duty of due diligence and impartiality which should have informed the Commission's conduct.

3. Third plea in law, alleging unequal treatment of Portovesme and Alcoa Trasformazioni, which was unreasonable.

Arguments in support of the plea: in another decision relating to another company, the Commission found to be lawful the same scheme that is now declared incompatible with the common market as regards the applicant, thus giving rise to unreasonable unequal treatment as between the two companies.

4. Fourth plea in law, relating to the existence of aid for the purpose of Article 107(1) TFEU.

Arguments in support of the plea: through the preferential tariff granted to the applicant, the Italian State intervened in order to eliminate an unjustified situation which placed certain parties at a disadvantage and to reduce the excessive costs relating to electricity consumption due to the poor connections between the islands network and the national mainland network. Consequently, the requirements that the measure should confer an economic advantage and be selective were not satisfied. Moreover, the intervention of the Cassa Conguaglio [Equalisation Fund for the Electricity Sector] was purely incidental and the measure in question cannot therefore be classified as constituting State resources. Lastly, that measure could not have had any effect on trade between Member States because, in the zinc market, there are no intra-Community trade flows.

5. Fifth plea in law, alleging that the assumptions on which the contested decision was based are incorrect.

Arguments in support of the plea: the decision is based on the incorrect assumption that the aid would have created an imbalance on the energy market, whereas the market affected by the scheme is the market for the production of heavy metals.

6. Sixth plea in law, relating to the classification of the aid as new aid or existing aid.

Arguments in support of the plea: the preferential tariff in question should have been classified as existing aid, already found to be compatible with the common market by an earlier Commission decision.

7. Seventh plea in law, relating to the compatibility of the aid with the common market.

Arguments in support of the plea: the Commission failed to take account of the fact that the measure in question contributed to ensuring the development of sustainable employment in the area concerned.

8. Eighth plea in law, alleging infringement of Articles 2, 3, 5 and 12 TEC and misapplication of the principles of equality and proportionality in the actions of the Community institutions.

Arguments in support of the plea: the contested decision unlawfully rejected an aid scheme designed to eliminate a situation which had given rise to serious discrimination between companies producing heavy metals in Italy, on the one hand, and in Europe on the other.

9. Ninth plea in law, alleging infringement of Article 174 TFEU and Annex D to Declaration No 30 on island regions.

Arguments in support of the plea: the Commission failed to take account of the structural and market deficit arising as a result of the island regions.

10. Tenth plea in law, alleging infringement of the rules governing procedure (Article 107(3)(a), (b) and (c) TFEU) and misapplication of the 1998 Guidelines on national regional aid and misapplication of the 2007-2013 Guidelines.

Arguments in support of the plea: the Commission failed to comply with its obligation to carry out a correct assessment as to the compatibility of the aid.

11. Eleventh plea in law, alleging infringement of the principle of the protection of legitimate expectations.

Arguments in support of the plea: the Commission failed to take account both of the fact that the scheme from which the applicant benefited had already been declared compatible with the common market by an earlier decision and that no concerns were raised relation to that scheme for a period of 15 years following the decision at issue, factors which are therefore relevant with regard to the applicant's legitimate expectations.

(¹) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

Action brought on 6 June 2011 — European Dynamics Luxembourg and Others/OHIM

(Case T-299/11)

(2011/C 232/64)

Language of the case: English

Parties

Applicants: European Dynamics Luxembourg SA (Ettelbrück, Luxembourg), Evropaiki Dynamiki — Proigmena Systemata Tilepikoinonion Pliroforikis kai Tilematikis AE (Athènes, Greece) and European Dynamics Belgium SA (Brussels, Belgium) (represented by: N. Korogiannakis and M. Dermitzakis, lawyers)

Defendants: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought

- Annul the OHIM's decision to select the bid of the applicant filed in response to the open call for tenders No AO/021/10 for 'External service provision for program and project management and technical consultancy in the field of information technologies (PMTIC)' as third contractor in the cascade mechanism, communicated to the applicant by letter dated 28 March 2011, and all the related decisions of OHIM including those to award the respective contract to the first and second cascade contractor;
- Order the OHIM to pay the applicants' damages suffered on account of the tendering procedures in question for an amount of 6 500 000 EUR;
- In addition order the OHIM to pay the applicants' damages suffered on account of the loss of opportunity and damage in its reputation and credibility for an amount 650 000 EUR;
- Order the OHIM to pay the applicant's legal and other costs and expenses incurred in connection with this application, even if the current application is rejected.

Pleas in law and main arguments

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

1. First plea in law, alleging a violation of Article 100(2) of Regulation No 1605/2002 (¹). The applicant submits in particular a violation of the obligation to state reasons by refusing to provide sufficient justification or explanation to the applicant and objects to the non disclosure of the relative merits of the successful tenderers.