

In that respect, it is further claimed that the defendant, with regard to the unequal treatment, failed to comply with its obligation to state reasons under the second paragraph of Article 263 TFEU and Article 42(2)(c) of the Charter of Fundamental Rights of the European Union. Furthermore, the unequal treatment infringed the principle of non-discrimination under Article 32(1) of Directive 2009/72/EC. <sup>(1)</sup>

3. Infringement of the principle of the protection of legitimate expectations

In the third plea in law, it is claimed that, in view of the particular circumstances, the applicant could expect to be allowed to retain the special network charges granted.

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<sup>(1)</sup> Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ 2009 L 211, p. 55).

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**Action brought on 8 April 2019 — Evonik Degussa v Commission**

**(Case T-218/19)**

(2019/C 206/63)

*Language of the case: German*

**Parties**

*Applicant:* Evonik Degussa GmbH (Essen, Germany) (represented by: N. Voß and D. Fouquet, lawyers)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the Court should:

- annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 (OJ 2019 L 14, p. 1) in respect of the years 2012 and 2013;
- in the alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in respect of the years 2012 and 2013;
- in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 in so far as it orders that baseload consumers with at least 7 000 annual hours of use repay more than 20 % of the published network charges, baseload consumers with at least 7 500 annual hours of use repay more than 15 % of the published network charges, and baseload consumers with at least 8 000 annual hours of use repay more than 10 % of the published network charges;

- in the further alternative, annul Decision SA.34045 (2013/C) (ex 2012/NN) of 28 May 2018 notified under document C(2018) 3166 as against the applicant in so far as it orders that baseload consumers with at least 7 000 annual hours of use repay more than 20 % of the published network charges and baseload consumers with at least 7 500 annual hours of use repay more than 15 % of published network charges; and
- order the defendant to pay the costs, including lawyers' fees and travel expenses.

### **Pleas in law and main arguments**

The application is based on the following grounds.

1. Wrongful presumption of the existence of State aid for the purposes of Article 107(1) TFEU

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

In addition, in the examination of the 'selectivity' criterion, the reference system was incorrectly and incompletely identified.

It is further claimed that, because of the incomplete identification of the reference system, the defendant failed to comply with its obligation to state reasons under the second paragraph of Article 296 TFEU.

2. Infringement of the principle of equal treatment

In the second plea in law, it is alleged that the defendant's decision provided for the obligation to make additional payments only for baseload consumers who were fully exempted from network charges in the years 2012 and 2013. Those baseload consumers were therefore unequally treated and unfairly disadvantaged *vis-à-vis* baseload consumers who, over the same period, enjoyed flat-rate network charge reductions and for whom there were no obligations to make additional payments.

In that respect, it is further claimed that the defendant, with regard to the unequal treatment, failed to comply with its obligation to state reasons under the second paragraph of Article 263 TFEU and Article 42(2)(c) of the Charter of Fundamental Rights of the European Union. Furthermore, the unequal treatment infringed the principle of non-discrimination under Article 32(1) of Directive 2009/72/EC. <sup>(1)</sup>

3. Infringement of the principle of the protection of legitimate expectations

In the third plea in law, it is claimed that, in view of the particular circumstances, the applicant could expect to be allowed to retain the special network charges granted.

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<sup>(1)</sup> Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (OJ 2009 L 211, p. 55).

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