# GENERAL COURT

**Action brought on 14 February 2020 — Fryč v Commission**

**(Case T-92/20)**

(2020/C 161/55)

*Language of the case: Czech*

**Parties**

*Applicant:* Petr Fryč (Pardubice, Czech Republic) (represented by: Š. Oharková, lawyer)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the Court should:

— rule that the institutions of the European Union gravely breached their obligations and caused the applicant harm on the grounds that:

  — the European Commission adopted Regulation (EC) No 800/2008 of 6 August 2008 (General block exemption Regulation) in a form in which, inter alia, it exceeds the limits of the Commission's legal authority under the Treaties, in which it does not ensure observance of the constitutional principles that interference in competition affecting the common market must take place only exceptionally and be justified and in which it unlawfully allowed State aid to be implemented in the context of a subsidy programme (Operační program Podnikání a inovace (Operational Programme Enterprise and Innovation; 'OPEI')), which damaged the business of the applicant's firm;

  — by its decision of 3 December 2007, the European Commission adopted the Operational Programme infringing the Treaties and the Charter and did not publish that decision;

  — the European Commission did not proceed properly in dealing with the applicant's complaint as to the unlawfulness of the OPEI inasmuch as it, first, failed to check the circumstances of the creation and implementation of the OPEI and, secondly, failed to properly justify its rejection of the applicant's complaint;

  — the Court of Justice of the European Union refused to address the merits of the case in the application for annulment of the General block exemption Regulation and dismissed the application as manifestly unfounded, thereby breaching its constitutional obligation to apply the principle of proportionality, and by its excessively formalistic, unilateral approach infringed the applicant's constitutional right to effective legal protection and a fair trial;

— determine, that the defendant is required to pay the applicant the sum of EUR 4 800 000 by way of compensation for the harm caused by the above, within three days of the date on which the judgment becomes final;

— award the applicant the costs of the proceedings.

**Pleas in law and main arguments**

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

1. First plea in law, alleging that harm was caused to the applicant on the grounds of the EU's non-contractual liability under the second paragraph of Article 340 of the Treaty on the Functioning of the European Union (TFEU).

As a result of the public aid provided to the applicant's competitors in breach of the TFEU, the applicant's company was damaged in competitive terms in such a way as first led to a reduction in its annual turnover and to a reduction in its annual profit of CZK several million. Having regard to the fact that the duration of the public aid, and thus of the related unsatisfactory economic situation of the company, was several years, a decision to declare insolvency was made by the competent court in the Czech Republic.

In the event that Commission Regulation (EC) No 800/2008 (General block exemption Regulation) was lawful, then the aid which was granted selectively and on a discriminatory basis in the context of the OPEI subsidy programme caused the applicant particular and exceptional harm, which entirely exceeded the limits of the economic risk connected with the economic activity of the applicant's company.

2. Second plea in law, alleging that the Commission adopted Regulation (EC) No 800/2008 of 6 August 2008 (General block exemption Regulation) in a form which does not ensure observance of Article 107 TFEU.

Under Article 109 TFEU, the Council is authorised to specify by regulation areas in which the standard procedure, in which the Commission assesses the proposal for State aid and tests it in accordance with Article 107 TFEU, does not apply. The Council adopted Regulation No 659/1999 and in that regulation (in accordance with Article 108(4) TFEU) authorised the Commission to issue regulations governing the conditions for the provision of State aid outside the standard 'ad hoc' approval regime. The Commission adopted Regulation No 70/2001, subsequently Regulation No 800/2008 and subsequently Regulation No 651/2014 (General block exemption Regulations).

However, in their regulations neither the Council nor the Commission could go beyond the framework of Article 107 TFEU; their role must consist in laying down the conditions for State aid so that Member States who implement State aid in 'exempted' areas could not implement State aid which would conflict with the principle of non-interference in competition, even if the aid is exempted from the standard procedure before the Commission. This is another reason why the Commission's monitoring (set out and guaranteed under the TFEU) of aid regimes even in exempted areas is ongoing, why (at least in theory) proceedings for the recovery of unlawful aid are available, and why the EU still declares itself to be a market economy, that is an economy which produces goods and services which consumers voluntarily procure in an attempt to optimise the income/expense ratio, and not goods and services which are determined by politicians and officials.

3. Third plea in law, alleging that the Commission adopted its decision of 3 December 2007 on the Operational Programme (OPEI) in breach of the Treaties and the Charter and did not publish that decision.

The Commission is the only EU institution competent to check that State aid is implemented in accordance with Article 107 TFEU.

The Commission did not examine, with regard to the approved operational programme, whether and why there was a market failure, which is a condition for the implementation of State aid. The Commission further did not ask the Czech Republic for a cost-benefit analysis (CBA), objectively set indicators, an analysis of the impact on competition and further matters upon which, in the applicant's opinion, the implementation of State aid is conditional. The Commission's decision was therefore unlawful and in breach of the Commission's mission.

4. Fourth plea in law, alleging that the Commission received from the applicant a series of complaints, including detailed analyses, which demonstrate the unlawfulness of the aid implemented on the basis of the OPEI, that it did not act in accordance with Council Regulation (EC) No 659/1999 and that it did not comply with the principle of sound administration guaranteed to the applicant under the Charter of Fundamental Rights of the EU. Without taking any steps to check them or requesting any additional documents, the Commission refused to deal with the applicant's complaints on the ground that 'prima facie' it did not see any irregularity in the implementation of the OPEI subsidy programme.

5. Fifth plea in law, alleging a denial of justice by the Court of Justice of the EU (CJEU) due to excessive formalism.

The applicant contacted the CJEU with an application for annulment of the 3 block exemption Regulations on the grounds that they infringed the Treaties and the Charter. The CJEU in both instances dismissed the applicant's application for annulment of the block exemption Regulations as manifestly inadmissible. The reason for the dismissal was the failure to comply with the objective two-month time limit set by Article 263 TFEU. The CJEU did not in any way address the merits of the case and in a purely formalistic manner applied the time limit for the submission of the application. The applicant meanwhile argued that the fact that the Commission's control mechanism did not function properly was revealed only on the basis of the Commission's answer to the applicant's complaint. In the application, the applicant stated that he took the view that the limitation period started to run from the Commission's reply refusing to address in detail his complaint.

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## Action brought on 20 February 2020 — Sciessent v Commission

**(Case T-123/20)**

(2020/C 161/56)

*Language of the case: English*

### Parties

*Applicant:* Sciessent LLC (Beverly, Massachusetts, United States) (represented by: K. Van Maldegem and P. Sellar, lawyers, and V. McElwee, Solicitor)

*Defendant:* European Commission

### Form of order sought

The applicant claims that the Court should:

— annul Commission Implementing Decision (EU) 2019/1973 of 27 November 2019 not approving silver copper zeolite as an existing active substance for use in biocidal products product-types 2 and 7; ([1])

— order the defendant to pay the costs.

### Pleas in law and main arguments

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

1. First plea in law, alleging infringement of a rule of law relating to the application of the Treaties and of Articles 4 and 19 of Regulation (EU) No 528/2012. ([2])

   — The defendant, relying upon the Biocidal Products Committee (BPC) opinions on the approval of the active substance silver copper zeolite for product-types 2 and 7, reached the conclusions that the substance could not be approved on the grounds that sufficient efficacy had not been demonstrated. However, in the applicant's view, the efficacy assessment was unlawfully conducted by reference to a treated article. It is alleged that the defendant, in its evaluation of, and conclusion on, the efficacy of the substance, has misinterpreted and misapplied the relevant law, when considering the efficacy of silver copper zeolite.

2. Second plea in law, alleging lack of competence — infringement of Article 290 TFEU and Articles 4 and 19 of Regulation (EU) No 528/2012.

   — The reason for the non-approval of silver copper zeolite under the contested act is the alleged insufficient efficacy of the treated article in which it is used. However, the applicant maintains that the only criteria that the defendant could lawfully take into account are limited to those listed in Articles 4 and 19 of Regulation (EU) No 528/2012. Those criteria do not include the efficacy of the treated article whose assessment is otherwise left to the secondary, subsequent stage of biocidal product authorisation at the Member State level. In light of the fact that precisely that assessment has been undertaken by the defendant to justify the non-approval of silver copper zeolite, meaning that the defendant has gone far beyond what it is delegated to do under Regulation (EU) No 528/2012, the defendant breached Article 290 of the Treaties and Articles 4 and 19 of that Regulation.