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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Request for a preliminary ruling from the Finanzgericht Düsseldorf (Germany) lodged on 11 April 2014 — Vario Tek GmbH v Hauptzollamt Düsseldorf

(Case C-178/14)

(2014/C 223/02)

Language of the case: German

Referring court

Finanzgericht Düsseldorf

Parties to the main proceedings

Applicant: Vario Tek GmbH

Defendant: Hauptzollamt Düsseldorf

Questions referred

1. Does the fact that a video camera has no zoom function preclude its classification under subheading 8525 80 9 of the Combined Nomenclature in the version of Commission Regulation (EU) No 861/2010 of 5 October 2010 and Commission Regulation (EU) No 1006/2011 of 27 September 2011, both amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff? ([1])

2. If Question 1 is answered in the negative, is a video camera recorder able to record sound and images taken by the camera within the meaning of CN subheading 8525 80 91 solely by virtue of the fact that a video or audio file can be copied, via a USB port on the camera, from another device to the interchangeable storage medium required to operate the camera, even though those files cannot be viewed or listened to with the camera alone?

([1]) Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1) as amended by Commission Regulation (EU) No 861/2010 of 5 October 2010 and Commission Regulation No 1006/2011 of 27 September 2011 amending Annex I to Regulation (EEC) No 2658/87, OJ 2010 L 284, p. 1.

Appeal brought on 11 April 2014 by Mega Brands International, Luxembourg, Zweigniederlassung Zug against the judgment of the General Court (Second Chamber) delivered on 4 February 2014 in Cases T-604/11 and T-292/12: Mega Brands International, Luxembourg, Zweigniederlassung Zug v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-182/14 P)

(2014/C 223/03)

Language of the case: English

Parties

Appellant: Mega Brands International, Luxembourg, Zweigniederlassung Zug (represented by: A. Nordemann, M.C. Maier, Rechtsanwälte)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought

The appellant claims that the Court should:

— annul the contested judgment of the General Court of 4 February 2014 as far as it concerns Case T-292/12,

— if necessary, remit the case back to the General Court,

— order the Defendant to bear the costs of the proceedings.

Pleas in law and main arguments

The appellant bases its appeal on a single plea, alleging infringement of article 8(1)(b) of Council Regulation (EC) N° 207/2009 ([1]), of 26 February 2009, on the Community trade mark.

Specifically the appellant submits that the General Court erred in law:

1) in not taking into consideration, or even mentioning, in the framework of a global assessment, that the earlier trade mark, MAGNET 4, consists of the number '4';

2) in considering, at paragraphs 22 and 25 of its judgment, the element MAGNET as the dominant element of the earlier trademark, MAGNET 4;

3) in applying, at paragraph 25, different standards to the assessment of the phonetic and visual similarities of the signs MAGNET 4 and MAGNEXT;

4) by not taking into account, at paragraph 35, in the framework of a global appreciation of the likelihood of confusion, the interdependence of the relevant factors, in particular the low level of distinctiveness of the earlier mark, MAGNET 4, the lack of conceptual similarity of the signs MAGNET 4 and MAGNEXT, and the weak degree of phonetic and visual similarities of the signs;

5) in not providing substantive grounds, in paragraph 35, with regard to the existence of a likelihood of confusion between the signs MAGNET 4 and MAGNEXT

([1]) OJ L 78, p. 1

Request for a preliminary ruling from the Juzgado de Primera Instancia No 58 de Madrid (Spain) lodged on 15 April 2014 — Juan Pedro Ludeña Hormigos v Banco Santander, S.A.

(Case C-188/14)

(2014/C 223/04)

Language of the case: Spanish

Referring court

Juzgado de Primera Instancia No 58 de Madrid

Parties to the main proceedings

Applicant: Juan Pedro Ludeña Hormigos

Defendant: Banco Santander, S.A.

Questions referred

1. Is Article 22.1 of Law 16/09 of 13 November on payment services compatible with Community law, insofar as it allows a bank to apply and/or increase the cost of services by changing the conditions initially agreed upon?

2. Is it sufficient protection for that user that he may terminate the contract without charge?

3. Are contractual terms agreed between the parties that provide the same options as those provided for in the provision referred to in the first question lawful?

4. Lastly, if the reply to the foregoing questions is affirmative, is the notice period of two months compatible with Community law?

Action brought on 16 April 2014 — European Commission v Kingdom of Denmark

(Case C-190/14)

(2014/C 223/05)

Language of the case: Danish

Parties

Applicant: European Commission (represented by: E. Manhaeve, U. Nielsen, acting as Agents)

Defendant: Kingdom of Denmark

Form of order sought

— Declare that, by failing to publish the final river basin management plans by 22 December 2009 and by failing to send a copy thereof to the Commission by 22 March 2010 and, in any event, by having failed to inform the Commission thereof, the Kingdom of Denmark has failed to fulfil its obligations under Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy; ([1])

— order the Kingdom of Denmark to pay the costs.

Pleas in law and main arguments

Denmark has repeatedly acknowledged — most recently by reply of 18 December 2013 to the Commission's supplementary reasoned opinion — that none of Denmark's four river basin districts are currently covered by a river basin management plan, and that a copy of the final river basin management plans for the six-year period ending 22 December 2015 has not been sent to the Commission.

The Commission finds that Denmark has still not complied with Article 13(1), (2) and (6) of the Directive. According to Denmark's reply of 8 May 2013, the infringement of Article 13 of the Directive may be expected to continue until May 2014 (approximately 3,5 years after the prescribed time limit). Furthermore, it is the Commission's view that Denmark has still not complied with the requirements of Article 15(1) of the Directive, under which the time limit for informing the Commission was set at 22 March 2010.

([1]) OJ 2000 L 327, p. 1.

Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 18 April 2014 — T.A. van Dijk v Staatssecretaris van Financiën

(Case C-197/14)

(2014/C 223/06)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: T.A. van Dijk

Other party to the proceedings: Staatssecretaris van Financiën

Questions referred

1) Is the Hoge Raad, as the highest national court, required, because of a question referred for a preliminary ruling by a lower national court, to refer a question to the Court of Justice for a preliminary ruling or must it await the answer to that question referred by the lower national court, even if it takes the view that the correct application of EU law on the matter to be decided by it is so obvious as to leave no scope for any reasonable doubt as to how that question must be answered?

2) If the first question is to be answered in the affirmative, are the Netherlands authorities in the area of social security then bound by an E 101 certificate issued by the authorities of another Member State, even where the case involves a Rhine boatman, with the result that the rules on the applicable legislation in Regulation No 1408/71, ([1]) to which that certificate refers, are not applicable pursuant to Article 7(2)(a) of that regulation?

([1]) Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ, English special edition 1971 (II), p. 416).

Request for a preliminary ruling from the Curtea de Apel Cluj (Romania) lodged on 22 April 2014 — Smaranda Bara and Others v Președintele Casei Națională de Asigurări de Sănătate, Casa Națională de Asigurări de Sănătate (CNAS), Agenția Națională de Administrare Fiscală (ANAF)

(Case C-201/14)

(2014/C 223/07)

Language of the case: Romanian

Referring court

Curtea de Apel Cluj

Parties to the main proceedings

Applicant: Smaranda Bara and Others

Defendants: Președintele Casei Națională de Asigurări de Sănătate, Casa Națională de Asigurări de Sănătate (CNAS), Agenția Națională de Administrare Fiscală (ANAF)

Questions referred

1) Are national tax authorities, as the body representing the competent ministry of a Member State, a financial institution within the meaning of Article 124 TFEU?

2) Is it possible make provision, by means of a measure akin to an administrative measure, or indeed a protocol concluded between the national tax authorities and another State institution, for the transfer of the data base relating to the income earned by the citizens of a Member State from the national tax authorities to another institution of the Member State, without giving rise to a measure establishing privileged access, as defined in Article 124 TFEU?

3) Is the transfer of the data base, the purpose of which is to impose an obligation on the citizens of the Member State to pay social security contributions, to the Member State institution for whose benefit the transfer is made covered by the concept of prudential considerations within the meaning of Article 124 TFEU?

4) May personal data be processed by authorities for which such data were not intended where such an operation gives rise, retroactively, to financial loss?

Request for a preliminary ruling from the Audiencia Provincial Navarra (Spain) lodged on 25 April 2014 — Antonia Valdivia Reche v Banco de Valencia, S.A.

(Case C-208/14)

(2014/C 223/08)

Language of the case: Spanish

Referring court

Audiencia Provincial Navarra

Parties to the main proceedings

Appellant: Antonia Valdivia Reche

Respondent: Banco de Valencia, S.A.

Question referred

Does Article 6 of Directive 93/13 ([1]) require the national court, when it has found a term setting a rate of 29 % for default interest to be unfair, to declare that term ineffective, without any scope for reducing the rate of interest agreed, even though such a reduction has been expressly requested by one of the consumers against whom proceedings have been brought?

([1]) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

Action brought on 2 May 2014 — European Commission v Ireland

(Case C-217/14)

(2014/C 223/09)

Language of the case: English

Parties

Applicant: European Commission (represented by: P. Hetsch, L. Flynn, K. Herrmann, agents)

Defendant: Ireland

The applicant claims that the Court should:

— Declare that, in relation to Directive 2009/72/EC ([1]) of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing 2003/54/EC, Ireland has failed to adopt by 3 March 2011 at the latest provisions transposing the definitions of points 8, 18, 21, 22, 32, 33 and 34 of its Article 2 and the requirements laid down in paragraphs (1) to (7) and (12) of its Article 9 in conjunction with paragraph (11) of Article 9, in the second and third sentences of its Article 16 as well as paragraphs (2) and (3) of Article 16, in the second sentence of its Article 38(1), in paragraphs (1), (4) and (8) of its Article 39, and in paragraphs (1) to (3), (5) and (7) of its Article 40 or, in any event, has failed to notify the Commission of any such measures, such that Ireland has failed to fulfil its obligations under Article 49(1) of that Directive;

— Impose a penalty payment on Ireland pursuant to Article 260(3) TFEU in the amount of EUR 20 358 per day, with effect from the date of the judgment of the Court and payable to the account of the Union's own resources, for failure to fulfil its obligation to notify measures transposing a directive adopted under a legislative procedure; and

— order Ireland to pay the costs.

Pleas in law and main arguments

The period prescribed for transposing the directive expired on 3 March 2011.

(1) OJ L 211, p. 55

Reference for a preliminary ruling from High Court of Ireland (Ireland) made on 5 May 2014 — Kuldip Singh, Denzel Nnjume, Khaled Aly v Minister for Justice and Equality

(Case C-218/14)

(2014/C 223/10)

Language of the case: English

Referring court

High Court of Ireland

Parties to the main proceedings

Applicants: Kuldip Singh, Denzel Nnjume, Khaled Aly

Defendant: Minister for Justice and Equality

Interested party: The Immigrant Council of Ireland

Questions referred

1. Where marriage involving EU and non-EU citizens ends in divorce obtained following departure of the EU citizen from a host Member State where EU rights were exercised by the EU citizen, and where Articles 7 and 13(2)(a) of Council Directive 2004/38/EC (1) apply, does the non-EU citizen retain a right of residence in the host Member State thereafter? If the answer is 'no', does the non-EU citizen have a right of residence in the host Member State during the period before divorce following departure of the EU citizen from the host Member State?

2. Are the requirements of Article 7(1)(b) of Directive 2004/38/EC met where an EU citizen spouse claims to have sufficient resources within the meaning of Article 8(4) of the Directive partly on the basis of the resources of the non-EU citizen spouse?

3. If the answer to the second question is 'no', do persons such as the applicants have rights under EU law (apart from the Directive) to work in the host Member State in order to provide or contribute to 'sufficient resources' for the purposes of Article 7 of the Directive?

(1) Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC OJ L 158, p. 77

Reference for a preliminary ruling from Employment Tribunals, Birmingham (United Kingdom) made on 6 May 2014 — Kathleen Greenfield v The Care Bureau Ltd

(Case C-219/14)

(2014/C 223/11)

Language of the case: English

Referring court

Employment Tribunals, Birmingham

Parties to the main proceedings

Applicant: Kathleen Greenfield

Defendant: The Care Bureau Ltd

Questions referred

i. Is the '*pro rata temporis principle*', as set out in clause 4.2 of the Framework Agreement, to be interpreted as requiring a provision of national law, (such as Regulations 13, 13A and 14 of the Working Time Regulations), to have the effect that, in circumstances where there is an increase in the working hours of an employee, the amount of leave already accumulated must be adjusted proportionally to the new working hours, with the result that the worker who increases his/her working hours has his/her entitlement to accrued leave recalculated in accordance with the increased hours?

ii. Is either clause 4.2 of the Framework Agreement or Article 7 of the Working Time Directive ([1]) to be interpreted as precluding a provision of national law (such as Regulations 13, 13A and 14 of the Working Time Regulations), from having the effect that in circumstances where there is an increase in the working hours of an employee, the amount of leave already accumulated is to be adjusted proportionally to the new working hours, with the result that the worker who increases his/her working hours has his/her entitlement to accrued leave recalculated in accordance with the revised hours?

iii. If the answer to question (i) and/or (ii) is yes, does the recalculation apply only to that portion of the holiday year during which the employee worked the increased hours or to some other period?

iv. When calculating the period of leave taken by a worker, is either clause 4.2 of the Framework Agreement or Article 7 of the Working Time Directive to be interpreted as requiring a provision of national law (such as Regulations 13, 13A and 14 of the Working Time Regulations) to have the effect of adopting a different approach as between calculating an employee's allowance in lieu of paid annual leave entitlement upon termination and when calculating an employee's remaining annual leave entitlement when they remain employed?

v. If the answer to question (iv) is yes, what is the difference in approach required to be adopted?

([1]) Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time OJ L 299, p. 9

Request for a preliminary ruling from the Juzgado de Primera Instancia No 7 de Las Palmas de Gran Canaria (Spain) lodged on 7 May 2014 — Tecom Mican, S.L. v Man Diesel & Turbo SE

(Case C-223/14)

(2014/C 223/12)

Language of the case: Spanish

Referring court

Juzgado de Primera Instancia No 7 de Las Palmas de Gran Canaria

Parties to the main proceedings

Applicant: Tecom Mican, S.L.

Defendant: Man Diesel & Turbo SE

Questions referred

1) Can a purely private document be considered an 'extrajudicial document' within the meaning of Article 16 of Regulation No 1393/2007 of the European Parliament and of the Council of 13 November 2007, ([1]) regardless of whether it was issued by a non-judicial public authority or official?

2) If so, can any private document whatsoever be considered an extrajudicial document or must it meet certain specific requirements?

3) Supposing that the private document meets those requirements, may a citizen of the Union request service under the procedure laid down in Article 16 of Regulation No 1393/2007 of the European Parliament and of the Council of 13 November 2007 in its current form, when he has already effected such service through another non-judicial public authority, for example, a notary?

4) Finally, is it necessary, for the purposes of Article 16 of Regulation 1393/2007, to take into account the fact that the cooperation has cross-border implications and is necessary for the proper functioning of the internal market? When must it be understood that cooperation has 'cross-border implications and is necessary to the proper functioning of the internal market'?

([1]) Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000OJ 2007 L 324, p. 79

Request for a preliminary ruling from the Tribunal d'instance de Dieppe (France) lodged on 8 May 2014 — Facet SA v Jean Henri

(Case C-225/14)

(2014/C 223/13)

Language of the case: French

Referring court

Tribunal d'instance de Dieppe

Parties to the main proceedings

Applicant: Facet SA

Defendant: Jean Henri

Questions referred

1. Does Article 22 of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers, ([1]) interpreted in the light of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, ([2]) prohibit the existence and application of standard terms in credit agreements whereby the consumer acknowledges that the creditor's obligations have been fulfilled?

2. Do the general principle of the effectiveness of Community law and Article 22 of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers, interpreted in the light of Council Directive 93/13/EEC of 5 April 1993, preclude the creditor's being able to establish proof of fulfilment of its pre-contractual and contractual obligations solely by means of the standard terms in credit agreements whereby the consumer acknowledges that those obligations have been fulfilled, without producing before the court the documents issued by the creditor and supplied to the borrower?

([1]) Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ 2008 L 133, p. 66).

([2]) OJ 1993 L 95, p. 29.

Request for a preliminary ruling from the Tribunal du travail de Liège (Belgium) lodged on 14 May 2014 — Abdoulaye Amadou Tall v Centre public d'action sociale de Huy (CPAS de Huy)

(Case C-239/14)

(2014/C 223/14)

Language of the case: French

Referring court

Tribunal du travail de Liège

Parties to the main proceedings

Applicant: Abdoulaye Amadou Tall

Defendant: Centre public d'action sociale de Huy (CPAS de Huy)

Question referred

According to Article 39/1 of the Law of 15 December 1980 on entry to Belgian territory, residence, establishment and expulsion of foreign nationals read in conjunction with Articles 39/2(l), 3rd subparagraph, Article 39/76, Article 39/82(4), 2nd subparagraph (d) and 57/6/2 of the same law, only appeals seeking annulment and suspension due to extreme urgency may be brought against a decision refusing to consider a multiple asylum claim. Given that in such an appeal the court does not have full jurisdiction to determine issues of fact and law, the appeal does not have suspensory effect and that the applicant does not have the right of residence nor to material assistance while it is under consideration, are such appeals compatible with the requirements of Article 47 of the Charter of Fundamental Rights of the European Union and Article 39 of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States [1] for granting and withdrawing refugee status which lay down the right to an effective remedy?

[1] OJ 2005 L 326, p. 13.

Appeal brought on 22 May 2014 by HeidelbergCement AG against the judgment of the General Court (Seventh Chamber) delivered on 14 March 2014 in Case T-302/11 HeidelbergCement AG v European Commission

(Case C-247/14 P)

(2014/C 223/15)

Language of the case: German

Parties

Appellant: HeidelbergCement AG (represented by: U. Denzel, C. von Köckritz, P. Pichler, Rechtsanwälte)

Other party to the proceedings: European Commission

Form of order sought

1. Set aside the judgment under appeal;

2. annul Commission Decision C(2011) 2361 final (COMP/39520 — Cement and related products) of 30 March 2011, pursuant to the fourth paragraph of Article 263 TFEU, in so far as it concerns the appellant;

3. in the alternative to the claim at 2 above, refer the case back to the General Court for determination in accordance with the judgment of the Court of Justice as to points of law;

4. in any event order the Commission to pay the appellant's costs of the proceedings before the General Court and the Court of Justice.

Pleas in law and main arguments

The appeal has been brought against the judgment of the General Court of 14 March 2014 in Case T-302/11. The judgment was served on the appellant on 14 March 2014. By its judgment, the General Court dismissed the action brought by the appellant against Commission Decision C(2011) 2361 final of 30 March 2011 in case COMP/39520 — Cement and related products.

The appellant puts forward seven grounds of appeal:

First, the General Court did not adequately examine, and erroneously applied, the requirements relating to the determination of the purpose of the request for information under Article 18(3) of Regulation No 1/2003. ([1]) It did not sufficiently investigate the text of the decision requiring information and failed to have regard to the requirements relating to the Commission's obligation to state reasons.

Secondly, the General Court erred in law in proceeding on the assumption that the requirements relating to the obligation to state reasons under the second paragraph of Article 296 TFEU could be limited by Article 18(3) of Regulation No 1/2003. Accordingly, the General Court did not examine the complaint that there had been a failure to state reasons for the choice of a decision to require information in the case. Nor did the General Court adequately examine the complaint regarding the failure to state reasons in respect of the fixing of a time-limit. The text of the reasons for its decision is identical to text that is tailored to parallel proceedings and to a substantively different complaint put forward in that case.

Thirdly, the General Court's examination of 'necessity' for the purposes of the first sentence in Article 18(3) of Regulation No 1/2003 was inadequate, in that it considered a detailed explanation of the evidential position by the Commission to be superfluous. In addition, its requirements regarding the relationship between reasonable grounds for suspicion and the need for the information requested were wrong. Furthermore, it misinterpreted the first sentence of Article 18(3) of Regulation No 1/2003, as it did not deem it necessary to examine the appropriateness of the information requested, leading, moreover, to the undermining of the right to seek a review that arises from the third sentence of Article 18(3) of Regulation No 1/2003.

Fourthly, the General Court wrongly treated the first sentence of Article 18(3) of Regulation No 1/2003 as the legal basis for the Commission's request for the preparation, compiling and processing of information which the appellant did not have at its disposal in that form.

Fifthly, the General Court rejected the complaint relating to the overly short deadline for reply on the grounds of the appellant's economic power — viewed in the abstract — alone, and thus on the basis of insufficient and inconsistent reasoning.

Sixthly, the General Court disregarded the criterion of the certainty of EU legal acts in that it considered the decision requiring information to be sufficiently certain, even though the General Court itself found that the questions contained in it were formulated in vague terms. In addition, it failed to examine the specific complaints of lack of certainty and undermined the right to seek a review (see the third sentence of Article 18(3) of Regulation No 1/2003).

Seventhly, the General Court infringed the appellant's rights of defence, as it considered the appellant obliged to carry out assessments which could be used by the Commission in the context of an economic analysis to prove a suspected infringement of EU cartel law.

([1]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

Appeal brought on 23 May 2014 by Schwenk Zement KG against the judgment of the General Court (Seventh Chamber) delivered on 14 March 2014 in Case T-306/11 Schwenk Zement KG v European Commission

(Case C-248/14 P)

(2014/C 223/16)

Language of the case: German

Parties

Appellant: Schwenk Zement KG (represented by: M. Raible and S. Merz, Rechtsanwälte)

Other party to the proceedings: European Commission

Form of order sought

1. Set aside the judgment of the General Court (Seventh Chamber) of 14 March 2014 in Case T-306/11, in so far as the appellant's application was thereby dismissed;
2. annul in its entirety Commission Decision C(2011) 2367 final of 30 March 2011 in Case COMP/39520 — Cement and related products, in accordance with the fourth paragraph of Article 263 TFEU, in so far as it concerns the appellant;
3. in the alternative to 2 above, refer the case back to the General Court for renewed determination in accordance with the judgment of the Court of Justice as to points of law;
4. in any event, order the Commission to pay the appellant's costs in respect of the proceedings before the General Court and the Court of Justice.

Pleas in law and main arguments

The appeal has been brought against the judgment of the General Court of the European Union ('the General Court') of 14 March 2014 in Case T-306/11, in so far as it affects the appellant. The judgment was served on SCHWENK Zement AG on 14 March 2014. By its judgment, the General Court upheld in part and dismissed in part the appellant's action against Commission Decision C(2011) 2367 final of 30 March 2011 in a proceeding under Article 18(3) of Council Regulation (EC) No 1/2003 ([1]) (Case 39520 — Cement and related products).

The appellant puts forward three grounds of appeal:

First, the appellant claims that the General Court failed to have regard to the principle of proportionality in its assessment of the conduct of the Commission. The General Court infringed EU law by disregarding the hierarchical element inherent in the principle of proportionality, whereby, if there is any doubt, the milder of two available approaches is to be applied. Referring merely to the best guarantee of obtaining information, the General Court deemed it permissible that action was taken directly against the appellant by means of a decision requiring information under Article 18(3) of Regulation No 1/2003. That is not sufficient for the purposes of the principle of proportionality.

Secondly, the General Court carried out only an inadequate examination of the particular case and thus failed to take into account the appellant's substantive submissions. The General Court did not examine the individual case or take into account the special circumstances in relation to the appellant. Instead, the General Court proceeded on the basis of a large number of cement producers.

Thirdly, the appellant challenges the fact that, contrary to the obligation to state reasons, the General Court regarded the Commission's formulaic explanations as sufficient. The General Court infringed the obligation to state reasons in two respects. First, it failed to have regard to the requirements relating to the obligation to state reasons arising from the second paragraph of Article 296 TFEU and Article 18 of Regulation No 1/2003 in respect of legal acts of the Commission. Secondly, the General Court disregarded its own requirements concerning the obligation to state reasons. Lastly, the General Court's appraisal precluded any possibility of verifying whether the principle of proportionality had been observed. Should the General Court's judgment prevail to that extent, all that would remain of the principle of proportionality in the context of investigative measures under Article 18 of Regulation No 1/2003 would be an empty shell.

([1]) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

GENERAL COURT

Action brought on 13 March 2014 — Søndagsavisen A/S v European Commission

(Case T-167/14)

(2014/C 223/17)

Language of the case: Danish

Parties

Applicant: Søndagsavisen A/S (Søborg, Denmark) (represented by: M. Honoré and C. Fornø)

Defendant: European Commission

Form of order sought

— Annul the Commission's decision of 20 November 2013 not to raise objections to Denmark's production and innovation aid for written media (SA.36366);

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant, a competitor of the recipients of the aid, submits that the Commission ought to have found that there was doubt as to the compatibility of the reported measure with the internal market and that the Commission therefore ought to have adopted a decision to open the formal investigation procedure: see Article 108(2) TFEU and Article 4(4) of the procedural regulation. ([1]) In failing to do so, the Commission has disregarded the applicant's procedural rights under Article 108(2) TFEU.

In support of the argument that there was reasonable doubt as to the scheme's compatibility with the internal market, the applicant relies on three pleas in law:

— the Commission failed entirely to examine whether the scheme was suitable for ensuring the expansion of news content provided to the Danish people, thereby supporting the democratic process;

— the contested decision in any event lacks a sufficient statement of reasons with regard to suitability; and

— the Commission failed to examine the competition-distorting effects of the scheme in the relationship between free newspapers and newspapers sold for money.

([1]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the treaty on the functioning of the European Union (OJ 1999 L 83, p. 1).

Action brought on 15 April 2014 — Deutsche Edelstahlwerke v Commission

(Case T-230/14)

(2014/C 223/18)

Language of the case: German

Parties

Applicant: Deutsche Edelstahlwerke GmbH (Witten, Germany) (represented by: S. Altenschmidt and H. Janssen, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Commission of 18 December 2013 in State aid case SA.33995 (2013/C) — Support for renewable electricity and reduced EEG-surcharge for energy-intensive users;

— order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law: Infringement of Article 107(1) TFEU

   — The applicant claims that the contested decision infringes Article 107(1) TFEU because the EEG-surcharge provided for in the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources, hereinafter referred to as EEG) and the special compensation regime did not constitute an allocation of State or State-controlled resources. All the facts relevant to the qualification of those measures were determined in the preliminary proceedings between the Commission and the Federal Republic of Germany. There were no longer any doubts, which the Commission should have found in a proceeding pursuant to Article 108(2) TFEU and Article 4(4) of Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty. ([1])

2. Second plea in law: Infringement of Article 108(1) TFEU and the principle of legal certainty

   — The applicant submits in that regard that the Commission infringed Article 108(1) TFEU and the principle of legal certainty by applying the procedure for new aid pursuant to Article 4(4) of Regulation No 659/1999 instead of the procedure for existing aid pursuant to Article 17 et seq. of Regulation No 659/1999 in order to review its provisional assessment of the EEG as aid. In that regard, the applicant observes in particular that, by decision of 22 May 2002, the Commission did not classify the 2000 EEG as aid within the meaning of Article 107(1) TFEU because there was no transfer of State resources. The changes from the 2000 EEG to the 2012 EEG were not substantial in comparison to the Commission decision of 22 May 2002. The Commission, therefore, could have asserted an amended legal opinion in a proceeding pursuant to Article 108(1) TFEU without impacting on the applicant.

3. Third plea in law: Infringement of Article 41 of the Charter of Fundamental Rights and the principle of audi alteram partem

   — The applicant also claims that the defendant adopted the contested decision without previously giving the applicant the opportunity to provide comments.

([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 17 April 2014 — ArcelorMittal Hamburg and Others v Commission

(Case T-235/14)

(2014/C 223/19)

Language of the case: German

Parties

Applicants: ArcelorMittal Hamburg GmbH (Hamburg, Germany), Bregal Bremer Galvanisierungs GmbH (Bremen, Germany), ArcelorMittal Hochfeld GmbH (Duisburg, Germany) und ArcelorMittal Ruhrort GmbH (Duisburg) (represented by: H. Janssen and G. Engel, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the decision of the European Commission of 18 December 2013 in State aid case SA.33995 (2013/C) — Support for renewable electricity and reduced EEG-surcharge for energy-intensive users;

— order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law: Infringement of Article 107(1) TFEU

   — The applicants claim that the contested decision infringes Article 107(1) TFEU because the EEG-surcharge provided for in the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources, hereinafter referred to as EEG) and the special compensation regime did not constitute an allocation of State or State-controlled resources. All the facts relevant to the qualification of those measures were determined in the preliminary proceedings between the Commission and the Federal Republic of Germany. There were no longer any doubts, which the Commission should have found in a proceeding pursuant to Article 108(2) TFEU and Article 4(4) of Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty. ([1])

2. Second plea in law: Infringement of Article 108(1) TFEU and the principle of legal certainty

   — The applicants submit in that regard that the Commission infringed Article 108(1) TFEU and the principle of legal certainty by applying the procedure for new aid pursuant to Article 4(4) of Regulation No 659/1999 instead of the procedure for existing aid pursuant to Article 17 et seq. of Regulation No 659/1999 in order to review its provisional assessment of the EEG as aid. In that regard, the applicants observe in particular that, by decision of 22 May 2002, the Commission did not classify the 2000 EEG as aid within the meaning of Article 107(1) TFEU because there was no transfer of State resources. The changes from the 2000 EEG to the 2012 EEG were not substantial in comparison to the Commission decision of 22 May 2002. The Commission, therefore, could have asserted an amended legal opinion in a proceeding pursuant to Article 108(1) TFEU without impacting on the applicants.

3. Third plea in law: Infringement of Article 41 of the Charter of Fundamental Rights and the principle of audi alteram partem

   — The applicants also claim that the defendant adopted the contested decision without previously giving the applicants the opportunity to provide comments.

([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 16 April 2014 — Kronotex and Others v Commission

(Case T-236/14)

(2014/C 223/20)

Language of the case: German

Parties

Applicants: Kronotex GmbH & Co. KG (Heiligengrabe, Germany), Kronoply GmbH (Heiligengrabe) and K Face GmbH (Heiligengrabe) (represented by: H. Janssen and G. Engel, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the decision of the European Commission of 18 December 2013 in State aid case SA.33995 (2013/C) — Support for renewable electricity and reduced EEG-surcharge for energy-intensive users;

— order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law: Infringement of Article 107(1) TFEU

   — The applicants claim that the contested decision infringes Article 107(1) TFEU because the EEG-surcharge provided for in the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources, hereinafter referred to as EEG) and the special compensation regime did not constitute an allocation of State or State-controlled resources. All the facts relevant to the qualification of those measures were determined in the preliminary proceedings between the Commission and the Federal Republic of Germany. There were no longer any doubts, which the Commission should have found in a proceeding pursuant to Article 108(2) TFEU and Article 4(4) of Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty. ([1])

2. Second plea in law: Infringement of Article 108(1) TFEU and the principle of legal certainty

   — The applicants submit in that regard that the Commission infringed Article 108(1) TFEU and the principle of legal certainty by applying the procedure for new aid pursuant to Article 4(4) of Regulation No 659/1999 instead of the procedure for existing aid pursuant to Article 17 et seq. of Regulation No 659/1999 in order to review its provisional assessment of the EEG as aid. In that regard, the applicants observe in particular that, by decision of 22 May 2002, the Commission did not classify the 2000 EEG as aid within the meaning of Article 107(1) TFEU because there was no transfer of State resources. The changes from the 2000 EEG to the 2012 EEG were not substantial in comparison to the Commission decision of 22 May 2002. The Commission, therefore, could have asserted an amended legal opinion in a proceeding pursuant to Article 108(1) TFEU without impacting on the applicants.

3. Third plea in law: Infringement of Article 41 of the Charter of Fundamental Rights and the principle of audi alteram partem

   — The applicants also claim that the defendant adopted the contested decision without previously giving the applicants the opportunity to provide comments.

([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 17 April 2014 — Steinbeis Papier v Commission

(Case T-237/14)

(2014/C 223/21)

Language of the case: German

Parties

Applicant: Steinbeis Papier GmbH (Glückstadt, Germany) (represented by: H. Janssen and G. Engel, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Commission of 18 December 2013 in State aid case SA.33995 (2013/C) — Support for renewable electricity and reduced EEG-surcharge for energy-intensive users;

— order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law: Infringement of Article 107(1) TFEU

   — The applicant claims that the contested decision infringes Article 107(1) TFEU because the EEG-surcharge provided for in the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources, hereinafter referred to as EEG) and the special compensation regime did not constitute an allocation of State or State-controlled resources. All the facts relevant to the qualification of those measures were determined in the preliminary proceedings between the Commission and the Federal Republic of Germany. There were no longer any doubts, which the Commission should have found in a proceeding pursuant to Article 108(2) TFEU and Article 4(4) of Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty. ([1])

2. Second plea in law: Infringement of Article 108(1) TFEU and the principle of legal certainty

   — The applicant submits in that regard that the Commission infringed Article 108(1) TFEU and the principle of legal certainty by applying the procedure for new aid pursuant to Article 4(4) of Regulation No 659/1999 instead of the procedure for existing aid pursuant to Article 17 et seq. of Regulation No 659/1999 in order to review its provisional assessment of the EEG as aid. In that regard, the applicant observes in particular that, by decision of 22 May 2002, the Commission did not classify the 2000 EEG as aid within the meaning of Article 107(1) TFEU because there was no transfer of State resources. The changes from the 2000 EEG to the 2012 EEG were not substantial in comparison to the Commission decision of 22 May 2002. The Commission, therefore, could have asserted an amended legal opinion in a proceeding pursuant to Article 108(1) TFEU without impacting on the applicant.

3. Third plea in law: Infringement of Article 41 of the Charter of Fundamental Rights and the principle of audi alteram partem

   — The applicant also claims that the defendant adopted the contested decision without previously giving the applicant the opportunity to provide comments.

([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.

Appeal brought on 22 April 2014 by Jean-Pierre Bodson and Others against the judgment of the Civil Service Tribunal of 12 February 2014 in Case F-73/12, Bodson and Others v EIB

(Case T-240/14 P)

(2014/C 223/22)

Language of the case: French

Parties

Appellants: Jean-Pierre Bodson (Luxembourg, Luxembourg); Dalila Bundy (Cosnes-et-Romain, France); Didier Dulieu (Roussy-le-Village, France); Marie-Christel Heger (Nospelt, Luxembourg); Evangelos Kourgias (Senningerberg, Luxembourg); Manuel Sutil (Luxembourg); Patrick Vanhoudt (Gonderange, Luxembourg); and Henry von Blumenthal (Bergem, Luxembourg) (represented by L. Levi, lawyer)

Other party to the proceedings: European Investment Bank

Form of order sought by the appellants

The appellants claim that the General Court should:

— annul the judgment of the European Union Civil Service Tribunal of 12 February 2014 in Case F-73/12;

— consequently, uphold the forms of order sought by the appellants at first instance and, accordingly,

  — annul the decisions to apply to the applicants the decision of the EIB's Board of Directors of 13 December 2011 setting a salary progression capped at 2,8 % and the decision of the EIB's Management Committee of 14 February 2012 establishing a merit grid entailing the loss of 1 % of salary, decisions that are contained in the salary slips of April 2012, and annul to the same extent all the decisions contained in subsequent salary slips;

  — accordingly,

    — order the defendant to pay the difference between the remuneration resulting from the aforementioned decisions of the EIB's Board of Directors of 13 December 2011 and of the EIB's Management Committee of 14 February 2012 and that paid in application of the preceding salary scheme, with interest on arrears to be added to that difference in remuneration with effect from 12 April 2012 and then on the 12th day of every month until full payment, the rate of interest being the ECB rate, increased by three percentage points;

    — order the defendant to pay damages for the loss suffered by reason of the loss of purchasing power, such loss being assessed equitably, and on a provisional basis, at 1,5 % of the monthly remuneration of each applicant;

  — order the EIB to pay all the costs;

— order the defendant to pay all the costs of both sets of proceedings.

Pleas in law and main arguments

In support of the appeal, the appellants rely on four pleas in law.

1. First plea in law, alleging that the difference in character between a contractual employment relationship and an employment relationship governed by the Staff Regulations was not observed, an infringement of the fundamental conditions of the employment relationship and that the Memorandum of Understanding was not accorded the correct treatment in law.

2. Second plea in law, alleging a contradiction in the judgment of the Civil Service Tribunal and distortion of the information in the file.

3. Third plea in law, alleging infringement of the principles of legal certainty, of non-retroactivity and of foreseeability, and distortion of the information in the file.

4. Fourth plea in law, alleging that the Tribunal failed to correctly exercise its power of review as regards the manifest error of assessment and infringement of the obligation to state reasons.

Appeal brought on 22 April 2014 by Jean-Pierre Bodson and Others against the judgment of the Civil Service Tribunal of 12 February 2014 in Case F-83/12, Bodson and Others v EIB

(Case T-241/14 P)

(2014/C 223/23)

Language of the case: French

Parties

Appellants: Jean-Pierre Bodson (Luxembourg, Luxembourg); Dalila Bundy (Cosnes-et-Romain, France); Didier Dulieu (Roussy-le-Village, France); Marie-Christel Heger (Nospelt, Luxembourg); Evangelos Kourgias (Senningerberg, Luxembourg); Manuel Sutil (Luxembourg); Patrick Vanhoudt (Gonderange, Luxembourg); and Henry von Blumenthal (Bergem, Luxembourg) (represented by L. Levi, lawyer)

Other party to the proceedings: European Investment Bank

Form of order sought by the appellants

The appellants claim that the General Court should:

— annul the judgment of the European Union Civil Service Tribunal of 12 February 2014 in Case F-83/12;

— consequently, uphold the forms of order sought by the appellants at first instance and, accordingly,

  — annul the decisions to distribute awards to the appellants pursuant to the new performance system resulting from the decision of 14 December 2010 of the Board of Directors and the decisions of 9 November 2010 and 16 November 2011 of the Management Committee, the individual award decision being contained in the April 2012 notice, brought to the attention of the persons concerned on 22 April 2012 at the earliest;

  — accordingly,

    — order the defendant to pay the difference in remuneration resulting from the decision of the Board of Directors of 14 December 2010 and the decisions of 9 November 2010 and 16 November 2011 and that paid in application of the preceding bonus system, with interest on arrears to be added to that difference in remuneration with effect from 22 April 2012 until full payment, the rate of interest being the ECB rate, increased by three percentage points;

    — order the defendant to pay damages for the loss suffered by reason of the loss of purchasing power, such loss being assessed equitably, and on a provisional basis, at 1,5 % of the monthly remuneration of each applicant;

  — if necessary, if the defendant does not produce them of its own accord, request the defendant to produce the following documents by way of measures of organisation of procedure:

    — the minutes of the meeting of the Board of Directors of the EIB of 13 December 2011;

    — the drafts drawn up by the Department of Human Resources dated 22 June 2011 (RH/P&O/2011-119), 20 October 2011 (RH/P&O/2011-74) and 25 January 2012;

  — order the defendant to pay all the costs;

— order the defendant to pay all the costs of both sets of proceedings.

Pleas in law and main arguments

In support of the appeal, the appellants rely on five pleas in law.

1. First plea in law, alleging a procedural irregularity in so far as the Civil Service Tribunal refused to take the measures of organisation requested by the appellants.

2. Second plea in law, alleging that the difference in character between a contractual employment relationship and an employment relationship governed by the Staff Regulations was not observed, an infringement of the fundamental conditions of the employment relationship, that the Memorandum of Understanding was not accorded the correct treatment in law, distortion of information in the file and infringement by the Tribunal of its obligation to state reasons.

3. Third plea in law, alleging infringement of the principles of acquired rights and of legitimate expectations, and an infringement of the obligation to state reasons.

4. Fourth plea in law, alleging infringement of the principles of legal certainty, of non-retroactivity and of foreseeability, and an infringement of the duty to have regard for the welfare of officials and of the obligation to state reasons.

5. Fifth plea in law, alleging that the Tribunal failed to correctly exercise its power of review as regards the manifest error of assessment and a distortion of information in the file.

Action brought on 24 April 2014 — Luxembourg v Commission

(Case T-258/14)

(2014/C 223/24)

Language of the case: French

Parties

Applicant: Grand Duchy of Luxembourg (represented by: L. Delvaux, Agent, and P.-E. Partsch, A. Steichen, D. Waelbroeck, lawyers, and D. Slater, Solicitor)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare the present action admissible and well founded;

— annul the Commission decision of 24 March 2014 requiring Luxembourg to provide information relating to the practice of issuing anticipatory decisions in tax matters;

— order the Commission to pay the costs.

Pleas in law and main arguments

By the present action, the applicant seeks annulment of Commission Decision C (2014) 1986 final by which it directed the applicant, pursuant to Article 10(3) of Regulation No 659/1999, ([1]) to provide a complete list of anticipatory decisions made in 2010, 2011 and 2012 in favour of Luxembourg undertakings belonging to a group or legal structure involving one or more undertakings located outside the Grand Duchy of Luxembourg.

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

1. First plea in law, alleging infringement of Article 10 of Regulation No 659/1999 and of the rights of the defence, inasmuch as the Commission does not have the minimum amount of information required to justify the requests for information set out in the injunction, since its investigative powers are conditional upon its being in prior possession of sufficient factual and objective information, capable of giving rise to a reasonable suspicion of misconduct. The applicant argues that the Commission is making a 'speculative request for information' which is incompatible with the rights of the defence.

2. Second plea in law, alleging breach of the principle of proportionality, inasmuch as (i) the information that the Commission already has in its possession is unrelated to the nature and scope of the information requested from the applicant and (ii) the injunction to provide information goes beyond what is appropriate and necessary for the achievement of the Commission's objectives.

3. Third plea in law, alleging failure to give sufficient reasons, as the Commission has neither explained the reasons for the contested injunction nor clearly indicated the presumed facts that it intends to investigate.

4. Fourth plea in law, alleging infringement of Articles 4 and 5 TEU and failure to respect the competence of the Member States in matters of direct taxation.

([1]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ 1999 L 83, p. 1).

Action brought on 24 April 2014 — Luxembourg v Commission

(Case T-259/14)

(2014/C 223/25)

Language of the case: French

Parties

Applicant: Grand Duchy of Luxembourg (represented by: L. Delvaux, Agent, and P.-E. Partsch, A. Steichen, D. Waelbroeck, lawyers, and D. Slater, Solicitor)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare the present action admissible and well founded;

— annul the Commission decision of 24 March 2014 requiring Luxembourg to provide information relating to the taxation scheme for revenue from intellectual property;

— order the Commission to pay the costs.

Pleas in law and main arguments

By the present action, the applicant seeks annulment of Commission Decision C (2014) 1987 final by which the Commission directed the applicant, pursuant to Article 10(3) of Regulation No 659/1999, ([1]) to provide information relating to the taxation scheme for revenue from intellectual property.

In support of the action, the applicant relies on four pleas in law which are essentially identical or similar to those raised in the context of Case T-258/14 *Luxembourg v Commission*.

([1]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ 1999 L 83, p. 1).

Action brought on 25 April 2014 — Vattenfall Europe Mining and Others v Commission

(Case T-260/14)

(2014/C 223/26)

Language of the case: German

Parties

Applicants: Vattenfall Europe Mining AG (Cottbus, Germany), Vattenfall Europe Sales GmbH (Hamburg, Germany) and Vattenfall GmbH (Berlin, Germany) (represented by: R. Karpenstein and C. Johann, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul, in accordance with Article 264 TFEU, the decision of the European Commission of 18 December 2013 in the procedure State aid SA.33995 (2013/C) (ex 2013/NN) — Germany — Support for renewable electricity and reduced EEG-surcharge for energy-intensive users, C(2013) 4424 final;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law: No State resources within the meaning of Article 107(1) TFEU

   By their first plea, the applicants claim that the Commission wrongly assumes a use of 'State resources' within the meaning of Article 107(1) TFEU in the context of the financing flows provided for under the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources, hereinafter referred to as EEG).

   — An advantage without the use of State resources is not sufficient to operate as a legal basis fulfilling the definition of aid. The required use of State resources is lacking in relation to the EEG-surcharge because that surcharge is paid solely by private parties and the resources raised cannot be attributed to the State in the absence of a permanent control and the associated possibility of access.

— State control over the EEG-surcharge itself is ruled out simply because the amount of the surcharge is not determined by State authorities, but by the price of electricity on the electricity exchange and the amount of renewable electricity fed into it. In addition, there are no opportunities for the State to influence the relationship between the energy supplier and the ultimate consumer at the fifth stage of the EEG compensation mechanism. The passing-on of the costs takes place here in a relationship governed purely by private law.

— Consequently, the required State control is also lacking in relation to the so-called special compensation regime of the EEG due to the essential link between the qualification of the EEG-surcharge and the surcharge reduction for energy-intensive users. It cannot be said that control exists by virtue of the fact that the decision on the control is made by the Bundesamt für Wirtschaft und Ausfuhrkontrolle (Federal Office of Economics and Export Control) because that office is assigned a purely reconstructive or declaratory task.

— In addition, by means of the surcharge reduction for energy-intensive users, the State did not waive resources which it normally could have expected to obtain. No reduction of the total revenue from the EEG-surcharge is associated with the surcharge reduction because of the particular construction of the EEG compensation mechanism. On the contrary, the surcharge reductions for energy-intensive users were compensated for by higher surcharges imposed on each kilowatt-hour of electricity supplied to non-privileged end-consumers.

2. Second plea in law: No selective advantage for the purposes of Article 107(1) TFEU

By their second plea, the applicants claim that the so-called special compensation regime of the EEG — contrary to the view taken by the Commission — does not provide for any selective advantage for the purposes of Article 107(1) TFEU. The distinction between energy-intensive and non-energy-intensive consumers is grounded in the logic of the surcharge system and is thereby a priori not selective. The surcharge reduction for energy-intensive users merely compensates for the particular disadvantages which, for those users, were associated with the EEG-surcharge raised according to consumption.

3. Third plea in law: No (threatening) distortion of competition or effect on trade

By their third plea, the applicants allege that the special compensation regime does not distort or threaten to distort competition and that trade between the Member States is not affected.

Action brought on 28 April 2014 — Hydro Aluminium Rolled Products and Others v Commission

(Case T-263/14)

(2014/C 223/27)

Language of the case: German

Parties

Applicants: Hydro Aluminium Rolled Products GmbH (Grevenbroich, Germany), Aluminium Norf GmbH (Neuss, Germany) and Trimet Aluminium SE (Essen, Germany) (represented by: U. Karpenstein and C. Johann, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul, in accordance with Article 264 TFEU, the decision of the European Commission of 18 December 2013 in the procedure State aid SA.33995 (2013/C) (ex 2013/NN) — Germany — Support for renewable electricity and reduced EEG-surcharge for energy-intensive users, C(2013) 4424 final;

— order the defendant to pay the 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: Absence of State resources within the meaning of Article 107(1) TFEU

   By their first plea, the applicants claim that the Commission wrongly assumes a use of 'State resources' within the meaning of Article 107(1) TFEU in the context of the financing flows provided for under the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources, hereinafter referred to as EEG).

   — The Commission wrongly concluded that the financing flows provided for under the EEG took place with the aid of 'State resources' within the meaning of Article 107(1) TFEU.

   — The EEG-surcharge is paid only by private parties. The resources collected cannot be attributed to the State. The required permanent State control and the related actual access possibility of the authorities are lacking both with regard to the EEG-surcharge itself and with regard to its reduction in favour of energy-intensive users.

   — In any event, the surcharge reduction for energy-intensive users does not result in a waiver of revenue which the State could normally have expected to receive. The reduction is financed solely from private resources, namely by a higher surcharge amount for every kilowatt-hour of electricity supplied to non-privileged end-consumers. The so-called special compensation regime of the EEG therefore does not affect the amount of the total revenue from the EEG-surcharge, but solely the internal distribution of charges.

2. Second plea in law: Absence of a selective advantage for the purpose of Article 107(1) TFEU

   By their second plea, the applicants claim that the so-called special compensation regime of the EEG — contrary to the view taken by the Commission — does not provide for any selective advantage for the purpose of Article 107(1) TFEU. The differentiation between energy-intensive and non-energy-intensive consumers has its roots in the logic of the EEG-surcharge system and is for this reason a priori not selective.

Action brought on 29 April 2014 — Schumacher Packaging v Commission

(Case T-265/14)

(2014/C 223/28)

Language of the case: German

Parties

Applicant: Schumacher Packaging GmbH (Schwarzenberg, Germany) (represented by: H. Janssen and G. Engel, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Commission of 18 December 2013 in State aid case SA.33995 (2013/C) — Support for renewable electricity and reduced EEG-surcharge for energy-intensive users;

— order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law: Infringement of Article 107(1) TFEU

   — The applicant claims that the contested decision infringes Article 107(1) TFEU because the EEG-surcharge provided for in the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources, hereinafter referred to as EEG) and the special compensation regime did not constitute an allocation of State or State-controlled resources. All the facts relevant to the qualification of those measures were determined in the preliminary proceedings between the Commission and the Federal Republic of Germany. There were no longer any doubts, which the Commission should have found in a proceeding pursuant to Article 108(2) TFEU and Article 4(4) of Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty. [1]

2. Second plea in law: Infringement of Article 108(1) TFEU and the principle of legal certainty

— The applicant submits in that regard that the Commission infringed Article 108(1) TFEU and the principle of legal certainty by applying the procedure for new aid pursuant to Article 4(4) of Regulation No 659/1999 instead of the procedure for existing aid pursuant to Article 17 et seq. of Regulation No 659/1999 in order to review its provisional assessment of the EEG as aid. In that regard, the applicant observes in particular that, by decision of 22 May 2002, the Commission did not classify the 2000 EEG as aid within the meaning of Article 107(1) TFEU because there was no transfer of State resources. The changes from the 2000 EEG to the 2012 EEG were not substantial in comparison to the Commission decision of 22 May 2002. The Commission, therefore, could have asserted an amended legal opinion in a proceeding pursuant to Article 108(1) TFEU without impacting on the applicant.

3. Third plea in law: Infringement of Article 41 of the Charter of Fundamental Rights and the principle of audi alteram partem

— The applicant also claims that the defendant adopted the contested decision without previously giving the applicant the opportunity to provide comments.

([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 29 April 2014 — Grupa Azoty ATT Polymers v Commission

(Case T-270/14)

(2014/C 223/29)

Language of the case: German

Parties

Applicant: Grupa Azoty ATT Polymers (Guben, Germany) (represented by: H. Janssen and S. Kobes, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Commission of 18 December 2013 in State aid case SA.33995 (2013/C) — Support for renewable electricity and reduced EEG-surcharge for energy-intensive users;

— order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law: Infringement of Article 107(1) TFEU

— The applicant claims that the contested decision infringes Article 107(1) TFEU because the EEG-surcharge provided for in the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources, hereinafter referred to as EEG) and the special compensation regime did not constitute an allocation of State or State-controlled resources. All the facts relevant to the qualification of those measures were determined in the preliminary proceedings between the Commission and the Federal Republic of Germany. There were no longer any doubts, which the Commission should have found in a proceeding pursuant to Article 108(2) TFEU and Article 4(4) of Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty. ([1])

2. Second plea in law: Infringement of Article 108(1) TFEU and the principle of legal certainty

— The applicant submits in that regard that the Commission infringed Article 108(1) TFEU and the principle of legal certainty by applying the procedure for new aid pursuant to Article 4(4) of Regulation No 659/1999 instead of the procedure for existing aid pursuant to Article 17 et seq. of Regulation No 659/1999 in order to review its provisional assessment of the EEG as aid. In that regard, the applicant observes in particular that, by decision of 22 May 2002, the Commission did not classify the 2000 EEG as aid within the meaning of Article 107(1) TFEU because there was no transfer of State resources. The changes from the 2000 EEG to the 2012 EEG were not substantial in comparison to the Commission decision of 22 May 2002. The Commission, therefore, could have asserted an amended legal opinion in a proceeding pursuant to Article 108(1) TFEU without impacting on the applicant.

3. Third plea in law: Infringement of Article 41 of the Charter of Fundamental Rights and the principle of audi alteram partem

— The applicant also claims that the defendant adopted the contested decision without previously giving the applicant the opportunity to provide comments.

([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 29 April 2014 — Styron Deutschland v Commission

(Case T-271/14)

(2014/C 223/30)

Language of the case: German

Parties

Applicant: Styron Deutschland GmbH (Schkopau, Germany) (represented by: H. Janssen and S. Kobes, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Commission of 18 December 2013 in State aid case SA.33995 (2013/C) — Support for renewable electricity and reduced EEG-surcharge for energy-intensive users;

— order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law: Infringement of Article 107(1) TFEU

— The applicant claims that the contested decision infringes Article 107(1) TFEU because the EEG-surcharge provided for in the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources, hereinafter referred to as EEG) and the special compensation regime did not constitute an allocation of State or State-controlled resources. All the facts relevant to the qualification of those measures were determined in the preliminary proceedings between the Commission and the Federal Republic of Germany. There were no longer any doubts, which the Commission should have found in a proceeding pursuant to Article 108(2) TFEU and Article 4(4) of Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty. ([1])

2. Second plea in law: Infringement of Article 108(1) TFEU and the principle of legal certainty

   — The applicant submits in that regard that the Commission infringed Article 108(1) TFEU and the principle of legal certainty by applying the procedure for new aid pursuant to Article 4(4) of Regulation No 659/1999 instead of the procedure for existing aid pursuant to Article 17 et seq. of Regulation No 659/1999 in order to review its provisional assessment of the EEG as aid. In that regard, the applicant observes in particular that, by decision of 22 May 2002, the Commission did not classify the 2000 EEG as aid within the meaning of Article 107(1) TFEU because there was no transfer of State resources. The changes from the 2000 EEG to the 2012 EEG were not substantial in comparison to the Commission decision of 22 May 2002. The Commission, therefore, could have asserted an amended legal opinion in a proceeding pursuant to Article 108(1) TFEU without impacting on the applicant.

3. Third plea in law: Infringement of Article 41 of the Charter of Fundamental Rights and the principle of audi alteram partem

   — The applicant also claims that the defendant adopted the contested decision without previously giving the applicant the opportunity to provide comments.

([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 30 April 2014 — P-D Glasseiden and Others v Commission

(Case T-272/14)

(2014/C 223/31)

Language of the case: German

Parties

Applicants: P-D Glasseiden GmbH Oschatz (Oschatz, Germany) P-D Interglas Technologies GmbH (Erbach, Germany), P-D Industriegesellschalt mbH, Glasfaser Brattendorf (Wilsdruff STT Grumbach, Germany) and Glashütte Freital GmbH (Freital, Germany) (represented by: H. Janssen and G. Engel, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the decision of the European Commission of 18 December 2013 in State aid case SA.33995 (2013/C) — Support for renewable electricity and reduced EEG-surcharge for energy-intensive users;

— order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law: Infringement of Article 107(1) TFEU

   — The applicants claim that the contested decision infringes Article 107(1) TFEU because the EEG-surcharge provided for in the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources, hereinafter referred to as EEG) and the special compensation regime did not constitute an allocation of State or State-controlled resources. All the facts relevant to the qualification of those measures were determined in the preliminary proceedings between the Commission and the Federal Republic of Germany. There were no longer any doubts, which the Commission should have found in a proceeding pursuant to Article 108(2) TFEU and Article 4(4) of Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty. ([1])

2. Second plea in law: Infringement of Article 108(1) TFEU and the principle of legal certainty

   — The applicants submit in that regard that the Commission infringed Article 108(1) TFEU and the principle of legal certainty by applying the procedure for new aid pursuant to Article 4(4) of Regulation No 659/1999 instead of the procedure for existing aid pursuant to Article 17 et seq. of Regulation No 659/1999 in order to review its provisional assessment of the EEG as aid. In that regard, the applicants observe in particular that, by decision of 22 May 2002, the Commission did not classify the 2000 EEG as aid within the meaning of Article 107(1) TFEU because there was no transfer of State resources. The changes from the 2000 EEG to the 2012 EEG were not substantial in comparison to the Commission decision of 22 May 2002. The Commission, therefore, could have asserted an amended legal opinion in a proceeding pursuant to Article 108(1) TFEU without impacting on the applicants.

3. Third plea in law: Infringement of Article 41 of the Charter of Fundamental Rights and the principle of audi alteram partem

   — The applicants also claim that the defendant adopted the contested decision without previously giving the applicants the opportunity to provide comments.

([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 30 April 2014 — Lech-Stahlwerke v Commission

(Case T-274/14)

(2014/C 223/32)

Language of the case: German

Parties

Applicant: Lech-Stahlwerke GmbH (Meitingen, Germany) (represented by: I. Zenke and T. Heymann, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul Decision 2014/C 37/07 of the European Commission of 18 December 2013 to initiate the formal investigation procedure under Article 108(2) TFEU in relation to the support for the generation of electricity from renewable energy sources and from mine gas in accordance with the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources) in the version of 25 October 2008, as amended by Article 5 of the law of 20 December 2012, and the reduced EEG-surcharge for energy-intensive users, in so far as the reduced EEG-surcharge for energy-intensive users such as the applicant is classified as aid within the meaning of Article 107(1) TFEU and provisionally declared incompatible with the internal market in that decision.

— order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law: Infringement of Article 107(1) TFEU — no State aid

   — The applicant claims that the support mechanism of the Gesetz für den Vorrang erneuerbarer Energien (hereinafter referred to as EEG) as a whole and particularly the special compensation regime for energy-intensive users did not constitute State aid within the meaning of Article 107(1) TFEU because there is no direct or indirect transfer of State resources. The support is financed solely from private resources, the financing flows of which are not controlled by any State authority.

2. Second plea in law: Infringement of Article 107(1) TFEU — no selective favouring of energy-intensive users

— The applicant also claims that the special compensation regime does not selectively favour energy-intensive users. First, the users did not receive any benefit which they would not have received under normal market conditions because, under those circumstances, EEG operators have to sell their electricity at market prices and there is already no EEG-surcharge. Secondly, the special compensation regime applies within the energy-intensive users, which are affected solely by the threatened loss of international competitiveness due to the EEG-surcharge, to all manufacturing sectors in a non-discriminatory way.

3. Third plea in law: Infringement of Article 107(1) TFEU — in any event, compatibility with the internal market

— However, even if the special compensation regime were to constitute aid, it is, in any event, clearly compatible with the internal market in accordance with the State aid rules of Article 107(3)(b) and (c) with regard to the objective, which is in the Community's interest, of environmental and climate protection whilst guaranteeing a sustainable and stable European economy.

Action brought on 30 April 2014 — Drahtwerk St. Ingbert and Others v Commission

(Case T-275/14)

(2014/C 223/33)

Language of the case: German

Parties

Applicants: Drahtwerk St. Ingbert GmbH (St. Ingbert, Germany) DWK Drahtwerk Köln GmbH (Cologne, Germany), Kalksteingrube Auersmacher GmbH (Völklingen, Germany), Rogesa Roheisengesellschaft Saar mbH (Dillingen, Germany), Stahlguss Saar GmbH (St. Ingbert) and Zentralkokerei Saar GmbH (Dillingen) (represented by: S. Altenschmidt and H. Janssen, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the decision of the European Commission of 18 December 2013 in State aid case SA.33995 (2013/C) — Support for renewable electricity and reduced EEG-surcharge for energy-intensive users;

— order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law: Infringement of Article 107(1) TFEU

— The applicants claim that the contested decision infringes Article 107(1) TFEU because the EEG-surcharge provided for in the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources, hereinafter referred to as EEG) and the special compensation regime did not constitute an allocation of State or State-controlled resources. All the facts relevant to the qualification of those measures were determined in the preliminary proceedings between the Commission and the Federal Republic of Germany. There were no longer any doubts, which the Commission should have found in a proceeding pursuant to Article 108(2) TFEU and Article 4(4) of Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty. ([1])

2. Second plea in law: Infringement of Article 108(1) TFEU and the principle of legal certainty

— The applicants submit in that regard that the Commission infringed Article 108(1) TFEU and the principle of legal certainty by applying the procedure for new aid pursuant to Article 4(4) of Regulation No 659/1999 instead of the procedure for existing aid pursuant to Article 17 et seq. of Regulation No 659/1999 in order to review its provisional assessment of the EEG as aid. In that regard, the applicants observe in particular that, by decision of 22 May 2002, the Commission did not classify the 2000 EEG as aid within the meaning of Article 107(1) TFEU because there was no transfer of State resources. The changes from the 2000 EEG to the 2012 EEG were not substantial in comparison to the Commission decision of 22 May 2002. The Commission, therefore, could have asserted an amended legal opinion in a proceeding pursuant to Article 108(1) TFEU without impacting on the applicants.

3. Third plea in law: Infringement of Article 41 of the Charter of Fundamental Rights and the principle of audi alteram partem

— The applicants also claim that the defendant adopted the contested decision without previously giving the applicants the opportunity to provide comments.

([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 30 April 2014 — Flachglas Torgau and Others v Commission

(Case T-276/14)

(2014/C 223/34)

Language of the case: German

Parties

Applicants: Flachglas Torgau GmbH (Torgau, Germany), Saint-Gobain Isover G+H AG (Ludwigshafen am Rhein, Germany) and Saint-Gobain Oberland AG (Bad Wurzach, Germany) (represented by: S. Altenschmidt and H. Janssen, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the decision of the European Commission of 18 December 2013 in State aid case SA.33995 (2013/C) — Support for renewable electricity and reduced EEG-surcharge for energy-intensive users;

— order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law: Infringement of Article 107(1) TFEU

— The applicants claim that the contested decision infringes Article 107(1) TFEU because the EEG-surcharge provided for in the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources, hereinafter referred to as EEG) and the special compensation regime did not constitute an allocation of State or State-controlled resources. All the facts relevant to the qualification of those measures were determined in the preliminary proceedings between the Commission and the Federal Republic of Germany. There were no longer any doubts, which the Commission should have found in a proceeding pursuant to Article 108(2) TFEU and Article 4(4) of Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty. ([1])

2. Second plea in law: Infringement of Article 108(1) TFEU and the principle of legal certainty

   — The applicants submit in that regard that the Commission infringed Article 108(1) TFEU and the principle of legal certainty by applying the procedure for new aid pursuant to Article 4(4) of Regulation No 659/1999 instead of the procedure for existing aid pursuant to Article 17 et seq. of Regulation No 659/1999 in order to review its provisional assessment of the EEG as aid. In that regard, the applicants observe in particular that, by decision of 22 May 2002, the Commission did not classify the 2000 EEG as aid within the meaning of Article 107(1) TFEU because there was no transfer of State resources. The changes from the 2000 EEG to the 2012 EEG were not substantial in comparison to the Commission decision of 22 May 2002. The Commission, therefore, could have asserted an amended legal opinion in a proceeding pursuant to Article 108(1) TFEU without impacting on the applicants.

3. Third plea in law: Infringement of Article 41 of the Charter of Fundamental Rights and the principle of audi alteram partem

   — The applicants also claim that the defendant adopted the contested decision without previously giving the applicants the opportunity to provide comments.

([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 30 April 2014 — Sabic Polyolefine v Commission

(Case T-279/14)

(2014/C 223/35)

Language of the case: German

Parties

Applicant: Sabic Polyolefine GmbH (Gelsenkirchen, Germany) (represented by: C. Arhold, N. Wimmer, F. Wesche, L. Petersen and T. Woltering, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Commission of 18 December 2013 to open the formal investigation procedure in State aid case SA.33995 (2013/C) (ex 2013/NN) — Support for renewable electricity and reduced EEG-surcharge for energy-intensive users;

— order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law: Infringement of Articles 107(1) and 108 TFEU due to erroneous classification of the special compensation regime

   — The applicant claims that the opening decision infringes Articles 107(1) and 108 TFEU and Article 13(1) of Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([1]) because the EEG-surcharge provided for in the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources, hereinafter referred to as EEG) did not constitute an allocation of State resources and the reduction of the EEG-surcharge for energy-intensive users did not constitute a waiver of State resources.

— The applicant states, in this context, that the Commission based its examination on new delimiting parameters which are incompatible with the principles of previous case-law. In particular, the Commission completely waived the criterion of the specific power of disposal of State authorities, which according to settled case-law is necessary for the classification as State resources, and deemed it to be sufficient for the State legislature to affect cash flows between private parties and for the compliance by the private parties with the legal requirements to be monitored by regulatory authorities.

— In addition, the Commission is bound by its decision by which it did not classify the 2000 EEG as aid within the meaning of Article 107(1) TFEU because there was no transfer of State resources, and therefore erred in law by classifying the 2012 EEG as a new, unlawfully implemented aid scheme.

— In addition, the Commission did not adequately examine and therefore also did not realise that the exceptions for energy-intensive users are justified according to the aim, nature and scheme of the 2012 EEG and therefore did not constitute a selective advantage.

2. Second plea in law: Infringement of Article 108(1) TFEU and Articles 18 and 19 of Regulation No 659/1999 due to failure to propose appropriate measures

— The applicant submits in that regard that, when examining the 2012 EEG, the Commission should in any event have applied the procedure for existing aid in accordance with Article 108(1) TFEU and Articles 17-19 of Regulation No 659/1999 and should have proposed appropriate measures to Germany before opening the formal investigation procedure instead of exposing market participants to considerable economic risks due to the classification of the 2012 EEG as new, non-notified aid.

3. Third plea in law: Infringement of the right to be heard

— The applicant argues also that the Commission should have consulted it in any event before adopting a decision with such serious legal effects.

4. Fourth plea in law: Insufficient reasoning

— Lastly, the applicant claims that the opening decision is vitiated by a lack of reasoning in the essential passages.

([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 30 April 2014 — Ineos Manufacturing Deutschland and Others v Commission

(Case T-280/14)

(2014/C 223/36)

Language of the case: German

Parties

Applicants: Ineos Manufacturing Deutschland GmbH (Cologne, Germany), Ineos Phenol GmbH (Gladbeck, Germany) and Ineos Vinyls Deutschland GmbH (Wilhelmshaven, Germany) (represented by: C. Arhold, N. Wimmer, F. Wesche, L. Petersen and T. Woltering, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the decision of the European Commission of 18 December 2013 to open the formal investigation procedure in State aid case SA.33995 (2013/C) (ex 2013/NN) — Support for renewable electricity and reduced EEG-surcharge for energy-intensive users;

— order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law: Infringement of Articles 107(1) and 108 TFEU due to erroneous classification of the special compensation regime

   — The applicants claim that the opening decision infringes Articles 107(1) and 108 TFEU and Article 13(1) of Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([1]) because the EEG-surcharge provided for in the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources, hereinafter referred to as EEG) did not constitute an allocation of State resources and the reduction of the EEG-surcharge for energy-intensive users did not constitute a waiver of State resources.

   — The applicants state, in this context, that the Commission based its examination on new delimiting parameters which are incompatible with the principles of previous case-law. In particular, the Commission completely waived the criterion of the specific power of disposal of State authorities, which according to settled case-law is necessary for the classification as State resources, and deemed it to be sufficient for the State legislature to affect cash flows between private parties and for the compliance by the private parties with the legal requirements to be monitored by regulatory authorities.

   — In addition, the Commission is bound by its decision by which it did not classify the 2000 EEG as aid within the meaning of Article 107(1) TFEU because there was no transfer of State resources, and therefore erred in law by classifying the 2012 EEG as a new, unlawfully implemented aid scheme.

   — In addition, the Commission did not adequately examine and therefore also did not realise that the exceptions for energy-intensive users are justified according to the aim, nature and scheme of the 2012 EEG and therefore did not constitute a selective advantage.

2. Second plea in law: Infringement of Article 108(1) TFEU and Articles 18 and 19 of Regulation No 659/1999 due to failure to propose appropriate measures

   — The applicants submit in that regard that, when examining the 2012 EEG, the Commission should in any event have applied the procedure for existing aid in accordance with Article 108(1) TFEU and Articles 17-19 of Regulation No 659/1999 and should have proposed appropriate measures to Germany before opening the formal investigation procedure instead of exposing market participants to considerable economic risks due to the classification of the 2012 EEG as new, non-notified aid.

3. Third plea in law: Infringement of the right to be heard

   — The applicants argue also that the Commission should have consulted them in any event before adopting a decision with such serious legal effects.

4. Fourth plea in law: Insufficient reasoning

   — Lastly, the applicants claim that the opening decision is vitiated by a lack of reasoning in the essential passages.

([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 30 April 2014 — Fels-Werke v Commission

(Case T-281/14)

(2014/C 223/37)

Language of the case: German

Parties

Applicant: Fels-Werke GmbH (Goslar, Germany) (represented by: C. Arhold, N. Wimmer, F. Wesche, L. Petersen and T. Woltering, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Commission of 18 December 2013 to open the formal investigation procedure in State aid case SA.33995 (2013/C) (ex 2013/NN) — Support for renewable electricity and reduced EEG-surcharge for energy-intensive users;

— order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law: Infringement of Articles 107(1) and 108 TFEU due to erroneous classification of the special compensation regime

   — The applicant claims that the opening decision infringes Articles 107(1) and 108 TFEU and Article 13(1) of Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([1]) because the EEG-surcharge provided for in the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources, hereinafter referred to as EEG) did not constitute an allocation of State resources and the reduction of the EEG-surcharge for energy-intensive users did not constitute a waiver of State resources.

   — The applicant states, in this context, that the Commission based its examination on new delimiting parameters which are incompatible with the principles of previous case-law. In particular, the Commission completely waived the criterion of the specific power of disposal of State authorities, which according to settled case-law is necessary for the classification as State resources, and deemed it to be sufficient for the State legislature to affect cash flows between private parties and for the compliance by the private parties with the legal requirements to be monitored by regulatory authorities.

   — In addition, the Commission is bound by its decision by which it did not classify the 2000 EEG as aid within the meaning of Article 107(1) TFEU because there was no transfer of State resources, and therefore erred in law by classifying the 2012 EEG as a new, unlawfully implemented aid scheme.

   — In addition, the Commission did not adequately examine and therefore also did not realise that the exceptions for energy-intensive users are justified according to the aim, nature and scheme of the 2012 EEG and therefore did not constitute a selective advantage.

2. Second plea in law: Infringement of Article 108(1) TFEU and Articles 18 and 19 of Regulation No 659/1999 due to failure to propose appropriate measures

   — The applicant submits in that regard that, when examining the 2012 EEG, the Commission should in any event have applied the procedure for existing aid in accordance with Article 108(1) TFEU and Articles 17-19 of Regulation No 659/1999 and should have proposed appropriate measures to Germany before opening the formal investigation procedure instead of exposing market participants to considerable economic risks due to the classification of the 2012 EEG as new, non-notified aid.

3. Third plea in law: Infringement of the right to be heard

   — The applicant argues also that the Commission should have consulted it in any event before adopting a decision with such serious legal effects.

4. Fourth plea in law: Insufficient reasoning

   — Lastly, the applicant claims that the opening decision is vitiated by a lack of reasoning in the essential passages.

([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 30 April 2014 — Bayer MaterialScience v Commission

(Case T-282/14)

(2014/C 223/38)

Language of the case: German

Parties

Applicant: Bayer MaterialScience AG (Leverkusen, Germany) (represented by: C. Arhold, N. Wimmer, F. Wesche, L. Petersen and T. Woltering, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Commission of 18 December 2013 to open the formal investigation procedure in State aid case SA.33995 (2013/C) (ex 2013/NN) — Support for renewable electricity and reduced EEG-surcharge for energy-intensive users;

— order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law: Infringement of Articles 107(1) and 108 TFEU due to erroneous classification of the special compensation regime

   — The applicant claims that the opening decision infringes Articles 107(1) and 108 TFEU and Article 13(1) of Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([1]) because the EEG-surcharge provided for in the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources, hereinafter referred to as EEG) did not constitute an allocation of State resources and the reduction of the EEG-surcharge for energy-intensive users did not constitute a waiver of State resources.

   — The applicant states, in this context, that the Commission based its examination on new delimiting parameters which are incompatible with the principles of previous case-law. In particular, the Commission completely waived the criterion of the specific power of disposal of State authorities, which according to settled case-law is necessary for the classification as State resources, and deemed it to be sufficient for the State legislature to affect cash flows between private parties and for the compliance by the private parties with the legal requirements to be monitored by regulatory authorities.

   — In addition, the Commission is bound by its decision by which it did not classify the 2000 EEG as aid within the meaning of Article 107(1) TFEU because there was no transfer of State resources, and therefore erred in law by classifying the 2012 EEG as a new, unlawfully implemented aid scheme.

   — In addition, the Commission did not adequately examine and therefore also did not realise that the exceptions for energy-intensive users are justified according to the aim, nature and scheme of the 2012 EEG and therefore did not constitute a selective advantage.

2. Second plea in law: Infringement of Article 108(1) TFEU and Articles 18 and 19 of Regulation No 659/1999 due to failure to propose appropriate measures

   — The applicant submits in that regard that, when examining the 2012 EEG, the Commission should in any event have applied the procedure for existing aid in accordance with Article 108(1) TFEU and Articles 17-19 of Regulation No 659/1999 and should have proposed appropriate measures to Germany before opening the formal investigation procedure instead of exposing market participants to considerable economic risks due to the classification of the 2012 EEG as new, non-notified aid.

3. Third plea in law: Infringement of the right to be heard

   — The applicant argues also that the Commission should have consulted it in any event before adopting a decision with such serious legal effects.

4. Fourth plea in law: Insufficient reasoning

— Lastly, the applicant claims that the opening decision is vitiated by a lack of reasoning in the essential passages.

(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 30 April 2014 — Advansa and Others v Commission

(Case T-283/14)

(2014/C 223/39)

Language of the case: German

Parties

Applicants: Advansa GmbH (Hamm, Germany), Akzo Nobel Industrial Chemicals GmbH (Ibbenbüren, Germany), Aurubis AG (Hamburg, Germany), CABB GmbH (Gersthofen, Germany), CBW Chemie GmbH Bitterfeld-Wolfen (Bitterfeld-Wolfen, Germany), CFB Chemische Fabrik Brunsbüttel GmbH & Co. KG (Bitterfeld-Wolfen), Clariant Produkte (Deutschland) GmbH (Frankfurt am Main, Germany), Dow Olefinverbund GmbH (Schkopau, Germany), Dow Deutschland Anlagengesellschaft mbH (Stade, Germany), Dralon GmbH (Dormagen, Germany), Ems-Chemie (Neumünster) GmbH & Co. KG (Neumünster, Germany), Hahl Filaments GmbH (Munderkingen, Germany), ISP Marl GmbH (Marl, Germany), Messer Produktionsgesellschaft mbH Siegen (Bad Soden am Taunus, Germany), Messer Produktionsgesellschaft mbH Salzgitter (Bad Soden am Taunus), Nabaltec AG (Schwandorf, Germany), Siltronic AG (Munich, Germany), Trevira GmbH (Bobingen, Germany), Wacker Chemie AG (Munich, Germany) und Westfalen Industriegase GmbH (Münster, Germany) (represented by: C. Arhold, N. Wimmer, F. Wesche, L. Petersen and T. Woltering, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the decision of the European Commission of 18 December 2013 to open the formal investigation procedure in State aid case SA.33995 (2013/C) (ex 2013/NN) — Support for renewable electricity and reduced EEG-surcharge for energy-intensive users;

— order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law: Infringement of Articles 107(1) and 108 TFEU due to erroneous classification of the special compensation regime

— The applicants claim that the opening decision infringes Articles 107(1) and 108 TFEU and Article 13(1) of Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (1) because the EEG-surcharge provided for in the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources, hereinafter referred to as EEG) did not constitute an allocation of State resources and the reduction of the EEG-surcharge for energy-intensive users did not constitute a waiver of State resources.

— The applicants state, in this context, that the Commission based its examination on new delimiting parameters which are incompatible with the principles of previous case-law. In particular, the Commission completely waived the criterion of the specific power of disposal of State authorities, which according to settled case-law is necessary for the classification as State resources, and deemed it to be sufficient for the State legislature to affect cash flows between private parties and for the compliance by the private parties with the legal requirements to be monitored by regulatory authorities.

— In addition, the Commission is bound by its decision by which it did not classify the 2000 EEG as aid within the meaning of Article 107(1) TFEU because there was no transfer of State resources, and therefore erred in law by classifying the 2012 EEG as a new, unlawfully implemented aid scheme.

— In addition, the Commission did not adequately examine and therefore also did not realise that the exceptions for energy-intensive users are justified according to the aim, nature and scheme of the 2012 EEG and therefore did not constitute a selective advantage.

2. Second plea in law: Infringement of Article 108(1) TFEU and Articles 18 and 19 of Regulation No 659/1999 due to failure to propose appropriate measures

— The applicants submit in that regard that, when examining the 2012 EEG, the Commission should in any event have applied the procedure for existing aid in accordance with Article 108(1) TFEU and Articles 17-19 of Regulation No 659/1999 and should have proposed appropriate measures to Germany before opening the formal investigation procedure instead of exposing market participants to considerable economic risks due to the classification of the 2012 EEG as new, non-notified aid.

3. Third plea in law: Infringement of the right to be heard

— The applicants argue also that the Commission should have consulted them in any event before adopting a decision with such serious legal effects.

4. Fourth plea in law: Insufficient reasoning

— Lastly, the applicants claim that the opening decision is vitiated by a lack of reasoning in the essential passages.

([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 2 May 2014 — Wirtschaftsvereinigung Stahl and Others v Commission

(Case T-285/14)

(2014/C 223/40)

Language of the case: German

Parties

Applicants: Wirtschaftsvereinigung Stahl (Düsseldorf, Germany), Benteler Steel/Tube GmbH (Paderborn), BGH Edelstahl Freital GmbH (Freital), BGH Edelstahl Siegen GmbH (Siegen), BGH Edelstahl Lippendorf GmbH (Lippendorf), Buderus Edelstahl Schmiedetechnik GmbH (Wetzlar), ESF Elbe-Stahlwerke Feralpi GmbH (Riesa), Friedr. Lohmann GmbH Werk für Spezial- & Edelstähle (Witten), Outokumpu Nirosta GmbH (Krefeld), Peiner Träger GmbH (Peine), ThyssenKrupp Steel Europe AG (Duisburg), ThyssenKrupp Rasselstein GmbH (Andernach), ThyssenKrupp Electrical Steel GmbH (Gelsenkirchen), Pruna Betreiber GmbH (Grünwald), ThyssenKrupp Gerlach GmbH (Homburg), ThyssenKrupp Federn und Stabilisatoren GmbH (Hagen), Salzgitter Mannesmann Rohr Sachsen GmbH (Zeithain), HSP Hoesch Spundwand und Profil GmbH (Dortmund), Salzgitter Mannesmann Grobblech GmbH (Mülheim an der Ruhr), Mülheim Pipecoatings GmbH (Mülheim an der Ruhr), Salzgitter Mannesmann Stainless Tubes Deutschland GmbH (Remscheid), Salzgitter Hydroforming GmbH & Co. KG (Crimmitschau), Salzgitter Mannesmann Line Pipe GmbH (Siegen), Ilsenburger Grobblech GmbH (Ilsenburg) (represented by: A. Reuter, C. Arhold, N. Wimmer, F.-A. Wesche, K. Kindereit, R. Busch, A. Hohler and T. Woltering, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the defendant's decision of 18 December 2013 to open the formal investigation procedure in State aid case SA.33995 (2013/C) (ex 2013/NN) — Support for renewable electricity and reduced EEG-surcharge for energy-intensive users, OJ 2014 C 37, p. 73;

— join the present procedure and the procedure relating to Germany's action before the General Court, seeking the annulment of the contested decision (lodging of the application on 21 March 2014);

in the alternative: order that access be made available to the file in the proceedings referred to relating to Germany's action;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law: No advantage

   — The applicants claim that the special compensation regime provided for in the Gesetz für den Vorrang ernererbarer Energien (Law for the priority of renewable energy sources, hereinafter referred to as EEG) does not involve an advantage for energy-intensive users in the steel industry in general and for applicants 2 to 24 in particular.

2. Second plea in law: No selective advantage

   — The applicants also claim that there is a fortiori no selective advantage for the purpose of Article 107(1) TFEU for the applicants in the special compensation regime.

3. Third plea in law: No use of State resources

   — In addition, the applicants maintain that the special compensation regime does not constitute support 'granted by a Member State or through State resources' within the meaning of Article 107(1) TFEU.

4. Fourth plea in law: No distortion of competition

   — The applicants claim that the special compensation regime does not distort competition in the European Union.

5. Fifth plea in law: No effect on trade between the Member States

   — The applicants further state that the special compensation regime also does not affect trade between Member States.

6. Sixth plea in law: A cessation or substantial reduction of the special compensation regime infringes the applicants' fundamental rights

   — The applicants submit that not only would the limits of Article 107 TFEU clearly defined by the Court of Justice of the European Union be exceeded upon a classification of the special compensation regime as aid or a substantial reduction of the special compensation regime, but the fundamental requirement of substantive equity of charges would also be infringed. An abolition or substantial reduction of the special compensation regime would therefore also infringe the applicants' fundamental rights, particularly their rights under the Charter of Fundamental Rights of the European Union.

7. Seventh plea in law: the special compensation regime is covered by the Commission decision of 22 May 2002

   — The applicants also claim that, by its decision of 22 May 2002, the Commission expressly stated that the EEG and its 'compensation regimes' did not fall to be categorised as aid. ([1]) That decision also covers the special compensation regime.

8. Eighth plea in law: Manifest error of assessment and insufficient preliminary examination

   — The applicants also allege that the Commission did not adequately examine and therefore also did not realise that the exceptions for energy-intensive users are justified according to the aim, nature and scheme of the EEG and therefore did not constitute a selective advantage.

9. Ninth plea in law: Infringement of the right to be heard

   — The applicants argue also that the Commission should have consulted them in any event before adopting a decision with such serious legal effects.

([1]) Commission letter of 22 May 2002, C(2002) 1887 fin./State aid NN 27/2000- Germany

Action brought on 2 May 2014 — Röchling Oertl Kunststofftechnik v Commission

(Case T-286/14)

(2014/C 223/41)

Language of the case: German

Parties

Applicant: Röchling Oertl Kunststofftechnik GmbH (Brensbach, Germany) (represented by: T. Volz, M. Ringel, B. Wißmann, M. Püstow, C. Oehme and T. Wielsch, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Commission of 18 December 2013 to open the formal investigation procedure under Article 108(2) TFEU against the Federal Republic of Germany regarding the support for renewable electricity and the reduced EEG-surcharge for energy-intensive users, State aid SA.33995 (2013/C) (ex 2013/NN), in so far as it applies to the reduction of the EEG-surcharge for energy-intensive users;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law: No advantage within the meaning of Article 107(1) TFEU

   — The applicant claims that the reduction of the EEG-surcharge for energy-intensive users, provided for in the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources, hereinafter referred to as EEG), does not constitute aid within the meaning of Article 107(1) TFEU. In this context, the applicant states that energy-intensive users are not favoured by the arrangement. The special compensation regime is, instead, compensation for exceptional costs which affect the applicant and comparable users to a special degree in the context of the support for renewable electricity, and is intended to re-establish the competitiveness of energy-intensive users who were initially considerably adversely affected by the EEG-surcharge.

2. Second plea in law: No State resources within the meaning of Article 107(1) TFEU

   — In addition, the applicant claims that the special compensation regime does not constitute a measure granted 'by a Member State or through State resources'. The applicant states, in this context, that the EEG-surcharge is not a State resource and that even a waiver of those resources by the special compensation regime cannot therefore constitute a measure granted through State resources.

   — The EEG-surcharge is not collected, administered or even allocated by the State or by a public or private institution nominated or established by the State. Instead, the EEG-surcharge can be directly collected by the transmission system operators on the basis of a corresponding entitlement under civil law. The EEG-surcharge does not benefit the State budget, and consequently the special compensation regime in no way indirectly or directly reduces State revenue.

   — The EEG-resources are also not available to State authorities. There is also no public control over the EEG-resources, such as by the Bundesamt für Wirtschaft und Ausfuhrkontrolle (Federal Office of Economics and Export Control, BAFA) or the Bundesnetzagentur (Federal Network Agency).

Action brought on 2 May 2014 — Schaeffler Technologies v Commission

(Case T-287/14)

(2014/C 223/42)

Language of the case: German

Parties

Applicant: Schaeffler Technologies GmbH & Co. KG (Herzogenaurach, Germany) (represented by: T. Volz, M. Ringel, B. Wißmann, M. Püstow, C. Oehme and T. Wielsch, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Commission of 18 December 2013 to open the formal investigation procedure under Article 108(2) TFEU against the Federal Republic of Germany regarding the support for renewable electricity and the reduced EEG-surcharge for energy-intensive users, State aid SA.33995 (2013/C) (ex 2013/NN), in so far as it applies to the reduction of the EEG-surcharge for energy-intensive users;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law: No advantage within the meaning of Article 107(1) TFEU

   — The applicant claims that the reduction of the EEG-surcharge for energy-intensive users, provided for in the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources, hereinafter referred to as EEG), does not constitute aid within the meaning of Article 107(1) TFEU. In this context, the applicant states that energy-intensive users are not favoured by the arrangement. The special compensation regime is, instead, compensation for exceptional costs which affect the applicant and comparable users to a special degree in the context of the support for renewable electricity, and is intended to re-establish the competitiveness of energy-intensive users who were initially considerably adversely affected by the EEG-surcharge.

2. Second plea in law: No State resources within the meaning of Article 107(1) TFEU

   — In addition, the applicant claims that the special compensation regime does not constitute a measure granted 'by a Member State or through State resources'. The applicant states, in this context, that the EEG-surcharge is not a State resource and that even a waiver of those resources by the special compensation regime cannot therefore constitute a measure granted through State resources.

   — The EEG-surcharge is not collected, administered or even allocated by the State or by a public or private institution nominated or established by the State. Instead, the EEG-surcharge can be directly collected by the transmission system operators on the basis of a corresponding entitlement under civil law. The EEG-surcharge does not benefit the State budget, and consequently the special compensation regime in no way indirectly or directly reduces State revenue.

   — The EEG-resources are also not available to State authorities. There is also no public control over the EEG-resources, such as by the Bundesamt für Wirtschaft und Ausfuhrkontrolle (Federal Office of Economics and Export Control, BAFA) or the Bundesnetzagentur (Federal Network Agency).

Action brought on 2 May 2014 — Energiewerke Nord v Commission

(Case T-288/14)

(2014/C 223/43)

Language of the case: German

Parties

Applicant: Energiewerke Nord GmbH (Rubenow, Germany) (represented by: T. Volz, M. Ringel, B. Wißmann, M. Püstow, C. Oehme and T. Wielsch, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Commission of 18 December 2013 to open the formal investigation procedure under Article 108(2) TFEU against the Federal Republic of Germany regarding the support for renewable electricity and the reduced EEG-surcharge for energy-intensive users, State aid SA.33995 (2013/C) (ex 2013/NN), in so far as it applies to the reduction of the EEG-surcharge for energy-intensive users;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law: No advantage within the meaning of Article 107(1) TFEU

   — The applicant claims that the reduction of the EEG-surcharge for energy-intensive users, provided for in the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources, hereinafter referred to as EEG), does not constitute aid within the meaning of Article 107(1) TFEU. In this context, the applicant states that energy-intensive users are not favoured by the arrangement. The special compensation regime is, instead, compensation for exceptional costs which affect the applicant and comparable users to a special degree in the context of the support for renewable electricity, and is intended to re-establish the competitiveness of energy-intensive users who were initially considerably adversely affected by the EEG-surcharge.

2. Second plea in law: No State resources within the meaning of Article 107(1) TFEU

   — In addition, the applicant claims that the special compensation regime does not constitute a measure granted 'by a Member State or through State resources'. The applicant states, in this context, that the EEG-surcharge is not a State resource and that even a waiver of those resources by the special compensation regime cannot therefore constitute a measure granted through State resources.

   — The EEG-surcharge is not collected, administered or even allocated by the State or by a public or private institution nominated or established by the State. Instead, the EEG-surcharge can be directly collected by the transmission system operators on the basis of a corresponding entitlement under civil law. The EEG-surcharge does not benefit the State budget, and consequently the special compensation regime in no way indirectly or directly reduces State revenue.

   — The EEG-resources are also not available to State authorities. There is also no public control over the EEG-resources, such as by the Bundesamt für Wirtschaft und Ausfuhrkontrolle (Federal Office of Economics and Export Control, BAFA) or the Bundesnetzagentur (Federal Network Agency).

Action brought on 2 May 2014 — H-O-T Servicecenter Nürnberg and Others v Commission

(Case T-289/14)

(2014/C 223/44)

Language of the case: German

Parties

Applicants: H-O-T Servicecenter Nürnberg GmbH (Nuremberg, Germany), H-O-T Servicecenter Schmölln GmbH & Co. KG (Schmölln), H-O-T Servicecenter Allgäu GmbH & Co. KG (Memmingerberg), EB Härtetechnik GmbH & Co. KG (Nuremberg) (represented by: A. Reuter, C. Arhold, N. Wimmer, F.-A. Wesche, K. Kindereit, R. Busch, A. Hohler and T. Woltering, lawyers)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the defendant's decision of 18 December 2013 to open the formal investigation procedure in State aid case SA.33995 (2013/C) (ex 2013/NN) — Support for renewable electricity and reduced EEG-surcharge for energy-intensive users, OJ 2014 C 37, p. 73;

— join the present procedure and the procedure relating to Germany's action before the General Court, seeking the annulment of the contested decision (lodging of the application on 21 March 2014);

in the alternative: order that access be made available to the file in the proceedings referred to relating to Germany's action;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law: No advantage

   — The applicants claim that the special compensation regime provided for in the Gesetz für den Vorrang ernererbarer Energien (Law for the priority of renewable energy sources, hereinafter referred to as EEG) does not involve an advantage for energy-intensive users in the hardening shop and coating industry in general and for the applicants in particular.

2. Second plea in law: No selective advantage

   — The applicants also claim that there is a fortiori no selective advantage for the purpose of Article 107(1) TFEU for the applicants in the special compensation regime.

3. Third plea in law: No use of State resources

   — In addition, the applicants maintain that the special compensation regime does not constitute support 'granted by a Member State or through State resources' within the meaning of Article 107(1) TFEU.

4. Fourth plea in law: No distortion of competition

   — The applicants claim that the special compensation regime does not distort competition in the European Union.

5. Fifth plea in law: No effect on trade between the Member States

   — The applicants further state that the special compensation regime also does not affect trade between Member States.

6. Sixth plea in law: A cessation or substantial reduction of the special compensation regime infringes the applicants' fundamental rights

   — The applicants submit that not only would the limits of Article 107 TFEU clearly defined by the Court of Justice of the European Union be exceeded upon a classification of the special compensation regime as aid or a substantial reduction of the special compensation regime, but the fundamental requirement of substantive equity of charges would also be infringed. An abolition or substantial reduction of the special compensation regime would therefore also infringe the applicants' fundamental rights, particularly their rights under the Charter of Fundamental Rights of the European Union.

7. Seventh plea in law: the special compensation regime is covered by the Commission decision of 22 May 2002

   — The applicants also claim that, by its decision of 22 May 2002, the Commission expressly stated that the EEG and its 'compensation regimes' did not fall to be categorised as aid. ([1]) That decision also covers the special compensation regime.

8. Eighth plea in law: Manifest error of assessment and insufficient preliminary examination

   — The applicants also allege that the Commission did not adequately examine and therefore also did not realise that the exceptions for energy-intensive users are justified according to the aim, nature and scheme of the EEG and therefore did not constitute a selective advantage.

9. Ninth plea in law: Infringement of the right to be heard

   — The applicants argue also that the Commission should have consulted them in any event before adopting a decision with such serious legal effects.

10. Tenth plea in law: Insufficient reasoning

   — Lastly, the applicants claim that the opening decision is vitiated by a lack of reasoning in the essential passages.

([1]) Commission letter of 22 May 2002, C(2002) 1887 fin./State aid NN 27/2000- Germany

Action brought on 2 May 2014 — egeplast international v Commission

(Case T-291/14)

(2014/C 223/45)

Language of the case: German

Parties

Applicant: egeplast international GmbH (Greven, Germany) (represented by: A. Rosenfeld, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul European Commission Decision C(2013) 4424 final of 18 December 2013 on State aid SA.33995 (2013/C) (ex 2013/NN) — Germany — Support for renewable electricity and reduced EEG-surcharge for energy-intensive users;

— order the European Commission to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. No favouring within the meaning of Article 107(1) TFEU

   — The applicant claims that the special compensation regime of the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources, hereinafter referred to as EEG) does not favour the applicant within the meaning of Article 107(1) TFEU, but merely reduces a charge severely affecting the applicant's competitiveness, which was imposed on the applicant only as a result of the introduction of the EEG-surcharge. It serves partially to compensate for a disadvantage and not to provide an advantage.

2. No selectivity

   — The applicant also claims that the special compensation regime is not selective because it is not limited to certain users or branches of production. Also in practice, the range of users which benefited from the compensation regime is just as diverse. The regime is fully compatible with the 2012 EEG and allows for a system of charges that is coherent with the EEG system.

3. No State resources or resources imputable to the State

— The applicant further submits that the EEG-surcharge revenues are not State resources or resources imputable to the State. The EEG-surcharge serves to fulfil the transmission system operators' (hereinafter referred to as TSOs) entitlement under civil law against the electricity suppliers for reimbursement of the expenses incurred by them in the marketing of electricity. The amount of the surcharge is determined by the TSOs without any State involvement. The powers conferred upon the Bundesnetzagentur (federal network agency) served only to review the proper determination of the amount of the surcharge by the TSOs. They did not, however, obtain for the Bundesnetzagentur any permanent control or power of disposal over the revenue from the surcharge.

4. No distortion of competition and effect on trade

— The applicant claims in that regard that it follows from the non-State nature of the surcharge revenue that reductions of the EEG-surcharge did not constitute a waiver of State revenue. There is, further, no waiver here because any loss of revenue of the surcharge account was counter-financed from private resources in the form of a higher surcharge amount for non-privileged end-consumers.

Action brought on 2 May 2014 — Klemme v Commission

(Case T-294/14)

(2014/C 223/46)

Language of the case: German

Parties

Applicant: Klemme AG (Lutherstadt Eisleben, Germany) (represented by: T. Volz, M. Ringel, B. Wißmann, M. Püstow, C. Oehme and T. Wielsch, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Commission of 18 December 2013 to open the formal investigation procedure under Article 108(2) TFEU against the Federal Republic of Germany regarding the support for renewable electricity and the reduced EEG-surcharge for energy-intensive users, State aid SA.33995 (2013/C) (ex 2013/NN), in so far as it applies to the reduction of the EEG-surcharge for energy-intensive users;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law: No advantage within the meaning of Article 107(1) TFEU

— The applicant claims that the reduction of the EEG-surcharge for energy-intensive users, provided for in the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources, hereinafter referred to as EEG), does not constitute aid within the meaning of Article 107(1) TFEU. In this context, the applicant states that energy-intensive users are not favoured by the arrangement. The special compensation regime is, instead, compensation for exceptional costs which affect the applicant and comparable users to a special degree in the context of the support for renewable electricity, and is intended to re-establish the competitiveness of energy-intensive users who were initially considerably adversely affected by the EEG-surcharge.

2. Second plea in law: No State resources within the meaning of Article 107(1) TFEU

— In addition, the applicant claims that the special compensation regime does not constitute a measure granted 'by a Member State or through State resources'. The applicant states, in this context, that the EEG-surcharge is not a State resource and that even a waiver of those resources by the special compensation regime cannot therefore constitute a measure granted through State resources.

— The EEG-surcharge is not collected, administered or even allocated by the State or by a public or private institution nominated or established by the State. Instead, the EEG-surcharge can be directly collected by the transmission system operators on the basis of a corresponding entitlement under civil law. The EEG-surcharge does not benefit the State budget, and consequently the special compensation regime in no way indirectly or directly reduces State revenue.

— The EEG-resources are also not available to State authorities. There is also no public control over the EEG-resources, such as by the Bundesamt für Wirtschaft und Ausfuhrkontrolle (Federal Office of Economics and Export Control, BAFA) or the Bundesnetzagentur (Federal Network Agency).

Action brought on 2 May 2014 — Autoneum Germany v Commission

(Case T-295/14)

(2014/C 223/47)

Language of the case: German

Parties

Applicant: Autoneum Germany GmbH (Roßdorf, Germany) (represented by: T. Volz, M. Ringel, B. Wißmann, M. Püstow, C. Oehme and T. Wielsch, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Commission of 18 December 2013 to open the formal investigation procedure under Article 108(2) TFEU against the Federal Republic of Germany regarding the support for renewable electricity and the reduced EEG-surcharge for energy-intensive users, State aid SA.33995 (2013/C) (ex 2013/NN), in so far as it applies to the reduction of the EEG-surcharge for energy-intensive users;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law: No advantage within the meaning of Article 107(1) TFEU

— The applicant claims that the reduction of the EEG-surcharge for energy-intensive users, provided for in the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources, hereinafter referred to as EEG), does not constitute aid within the meaning of Article 107(1) TFEU. In this context, the applicant states that energy-intensive users are not favoured by the arrangement. The special compensation regime is, instead, compensation for exceptional costs which affect the applicant and comparable users to a special degree in the context of the support for renewable electricity, and is intended to re-establish the competitiveness of energy-intensive users who were initially considerably adversely affected by the EEG-surcharge.

2. Second plea in law: No State resources within the meaning of Article 107(1) TFEU

— In addition, the applicant claims that the special compensation regime does not constitute a measure granted 'by a Member State or through State resources'. The applicant states, in this context, that the EEG-surcharge is not a State resource and that even a waiver of those resources by the special compensation regime cannot therefore constitute a measure granted through State resources.

— The EEG-surcharge is not collected, administered or even allocated by the State or by a public or private institution nominated or established by the State. Instead, the EEG-surcharge can be directly collected by the transmission system operators on the basis of a corresponding entitlement under civil law. The EEG-surcharge does not benefit the State budget, and consequently the special compensation regime in no way indirectly or directly reduces State revenue.

— The EEG-resources are also not available to State authorities. There is also no public control over the EEG-resources, such as by the Bundesamt für Wirtschaft und Ausfuhrkontrolle (Federal Office of Economics and Export Control, BAFA) or the Bundesnetzagentur (Federal Network Agency).

Action brought on 2 May 2014 — Erbslöh v Commission

(Case T-296/14)

(2014/C 223/48)

Language of the case: German

Parties

Applicant: Erbslöh AG (Velbert, Germany) (represented by: T. Volz, M. Ringel, B. Wißmann, M. Püstow, C. Oehme and T. Wielsch, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Commission of 18 December 2013 to open the formal investigation procedure under Article 108(2) TFEU against the Federal Republic of Germany regarding the support for renewable electricity and the reduced EEG-surcharge for energy-intensive users, State aid SA.33995 (2013/C) (ex 2013/NN), in so far as it applies to the reduction of the EEG-surcharge for energy-intensive users;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law: No advantage within the meaning of Article 107(1) TFEU

— The applicant claims that the reduction of the EEG-surcharge for energy-intensive users, provided for in the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources, hereinafter referred to as EEG), does not constitute aid within the meaning of Article 107(1) TFEU. In this context, the applicant states that energy-intensive users are not favoured by the arrangement. The special compensation regime is, instead, compensation for exceptional costs which affect the applicant and comparable users to a special degree in the context of the support for renewable electricity, and is intended to re-establish the competitiveness of energy-intensive users who were initially considerably adversely affected by the EEG-surcharge.

2. Second plea in law: No State resources within the meaning of Article 107(1) TFEU

— In addition, the applicant claims that the special compensation regime does not constitute a measure granted 'by a Member State or through State resources'. The applicant states, in this context, that the EEG-surcharge is not a State resource and that even a waiver of those resources by the special compensation regime cannot therefore constitute a measure granted through State resources.

— The EEG-surcharge is not collected, administered or even allocated by the State or by a public or private institution nominated or established by the State. Instead, the EEG-surcharge can be directly collected by the transmission system operators on the basis of a corresponding entitlement under civil law. The EEG-surcharge does not benefit the State budget, and consequently the special compensation regime in no way indirectly or directly reduces State revenue.

— The EEG-resources are also not available to State authorities. There is also no public control over the EEG-resources, such as by the Bundesamt für Wirtschaft und Ausfuhrkontrolle (Federal Office of Economics and Export Control, BAFA) or the Bundesnetzagentur (Federal Network Agency).

Action brought on 2 May 2014 — Walter Klein v Commission

(Case T-297/14)

(2014/C 223/49)

Language of the case: German

Parties

Applicant: Walter Klein GmbH & Co. KG (Wuppertal, Germany) (represented by: T. Volz, M. Ringel, B. Wißmann, M. Püstow, C. Oehme and T. Wielsch, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Commission of 18 December 2013 to open the formal investigation procedure under Article 108(2) TFEU against the Federal Republic of Germany regarding the support for renewable electricity and the reduced EEG-surcharge for energy-intensive users, State aid SA.33995 (2013/C) (ex 2013/NN), in so far as it applies to the reduction of the EEG-surcharge for energy-intensive users;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law: No advantage within the meaning of Article 107(1) TFEU

— The applicant claims that the reduction of the EEG-surcharge for energy-intensive users, provided for in the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources, hereinafter referred to as EEG), does not constitute aid within the meaning of Article 107(1) TFEU. In this context, the applicant states that energy-intensive users are not favoured by the arrangement. The special compensation regime is, instead, compensation for exceptional costs which affect the applicant and comparable users to a special degree in the context of the support for renewable electricity, and is intended to re-establish the competitiveness of energy-intensive users who were initially considerably adversely affected by the EEG-surcharge.

2. Second plea in law: No State resources within the meaning of Article 107(1) TFEU

— In addition, the applicant claims that the special compensation regime does not constitute a measure granted 'by a Member State or through State resources'. The applicant states, in this context, that the EEG-surcharge is not a State resource and that even a waiver of those resources by the special compensation regime cannot therefore constitute a measure granted through State resources.

— The EEG-surcharge is not collected, administered or even allocated by the State or by a public or private institution nominated or established by the State. Instead, the EEG-surcharge can be directly collected by the transmission system operators on the basis of a corresponding entitlement under civil law. The EEG-surcharge does not benefit the State budget, and consequently the special compensation regime in no way indirectly or directly reduces State revenue.

— The EEG-resources are also not available to State authorities. There is also no public control over the EEG-resources, such as by the Bundesamt für Wirtschaft und Ausfuhrkontrolle (Federal Office of Economics and Export Control, BAFA) or the Bundesnetzagentur (Federal Network Agency).

Action brought on 2 May 2014 — Erbslöh Aluminium v Commission

(Case T-298/14)

(2014/C 223/50)

Language of the case: German

Parties

Applicant: Erbslöh Aluminium GmbH (Velbert, Germany) (represented by: T. Volz, M. Ringel, B. Wißmann, M. Püstow, C. Oehme and T. Wielsch, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Commission of 18 December 2013 to open the formal investigation procedure under Article 108(2) TFEU against the Federal Republic of Germany regarding the support for renewable electricity and the reduced EEG-surcharge for energy-intensive users, State aid SA.33995 (2013/C) (ex 2013/NN), in so far as it applies to the reduction of the EEG-surcharge for energy-intensive users;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law: No advantage within the meaning of Article 107(1) TFEU

— The applicant claims that the reduction of the EEG-surcharge for energy-intensive users, provided for in the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources, hereinafter referred to as EEG), does not constitute aid within the meaning of Article 107(1) TFEU. In this context, the applicant states that energy-intensive users are not favoured by the arrangement. The special compensation regime is, instead, compensation for exceptional costs which affect the applicant and comparable users to a special degree in the context of the support for renewable electricity, and is intended to re-establish the competitiveness of energy-intensive users who were initially considerably adversely affected by the EEG-surcharge.

2. Second plea in law: No State resources within the meaning of Article 107(1) TFEU

— In addition, the applicant claims that the special compensation regime does not constitute a measure granted 'by a Member State or through State resources'. The applicant states, in this context, that the EEG-surcharge is not a State resource and that even a waiver of those resources by the special compensation regime cannot therefore constitute a measure granted through State resources.

— The EEG-surcharge is not collected, administered or even allocated by the State or by a public or private institution nominated or established by the State. Instead, the EEG-surcharge can be directly collected by the transmission system operators on the basis of a corresponding entitlement under civil law. The EEG-surcharge does not benefit the State budget, and consequently the special compensation regime in no way indirectly or directly reduces State revenue.

— The EEG-resources are also not available to State authorities. There is also no public control over the EEG-resources, such as by the Bundesamt für Wirtschaft und Ausfuhrkontrolle (Federal Office of Economics and Export Control, BAFA) or the Bundesnetzagentur (Federal Network Agency).

Action brought on 2 May 2014 — Fricopan Back v Commission

(Case T-300/14)

(2014/C 223/51)

Language of the case: German

Parties

Applicant: Fricopan Back GmbH Immekath (Klötze, Germany) (represented by: T. Volz, M. Ringel, B. Wißmann, M. Püstow, C. Oehme and T. Wielsch, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Commission of 18 December 2013 to open the formal investigation procedure under Article 108(2) TFEU against the Federal Republic of Germany regarding the support for renewable electricity and the reduced EEG-surcharge for energy-intensive users, State aid SA.33995 (2013/C) (ex 2013/NN), in so far as it applies to the reduction of the EEG-surcharge for energy-intensive users;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law: No advantage within the meaning of Article 107(1) TFEU

— The applicant claims that the reduction of the EEG-surcharge for energy-intensive users, provided for in the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources, hereinafter referred to as EEG), does not constitute aid within the meaning of Article 107(1) TFEU. In this context, the applicant states that energy-intensive users are not favoured by the arrangement. The special compensation regime is, instead, compensation for exceptional costs which affect the applicant and comparable users to a special degree in the context of the support for renewable electricity, and is intended to re-establish the competitiveness of energy-intensive users who were initially considerably adversely affected by the EEG-surcharge.

2. Second plea in law: No State resources within the meaning of Article 107(1) TFEU

— In addition, the applicant claims that the special compensation regime does not constitute a measure granted 'by a Member State or through State resources'. The applicant states, in this context, that the EEG-surcharge is not a State resource and that even a waiver of those resources by the special compensation regime cannot therefore constitute a measure granted through State resources.

— The EEG-surcharge is not collected, administered or even allocated by the State or by a public or private institution nominated or established by the State. Instead, the EEG-surcharge can be directly collected by the transmission system operators on the basis of a corresponding entitlement under civil law. The EEG-surcharge does not benefit the State budget, and consequently the special compensation regime in no way indirectly or directly reduces State revenue.

— The EEG-resources are also not available to State authorities. There is also no public control over the EEG-resources, such as by the Bundesamt für Wirtschaft und Ausfuhrkontrolle (Federal Office of Economics and Export Control, BAFA) or the Bundesnetzagentur (Federal Network Agency).

Action brought on 2 May 2014 — Michelin Reifenwerke v Commission

(Case T-301/14)

(2014/C 223/52)

Language of the case: German

Parties

Applicant: Michelin Reifenwerke AG & Co. KGaA (Karlsruhe, Germany) (represented by: T. Volz, M. Ringel, B. Wißmann, M. Püstow, C. Oehme and T. Wielsch, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Commission of 18 December 2013 to open the formal investigation procedure under Article 108(2) TFEU against the Federal Republic of Germany regarding the support for renewable electricity and the reduced EEG-surcharge for energy-intensive users, State aid SA.33995 (2013/C) (ex 2013/NN), in so far as it applies to the reduction of the EEG-surcharge for energy-intensive users;

— order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law: No advantage within the meaning of Article 107(1) TFEU

— The applicant claims that the reduction of the EEG-surcharge for energy-intensive users, provided for in the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources, hereinafter referred to as EEG), does not constitute aid within the meaning of Article 107(1) TFEU. In this context, the applicant states that energy-intensive users are not favoured by the arrangement. The special compensation regime is, instead, compensation for exceptional costs which affect the applicant and comparable users to a special degree in the context of the support for renewable electricity, and is intended to re-establish the competitiveness of energy-intensive users who were initially considerably adversely affected by the EEG-surcharge.

2. Second plea in law: No State resources within the meaning of Article 107(1) TFEU

— In addition, the applicant claims that the special compensation regime does not constitute a measure granted 'by a Member State or through State resources'. The applicant states, in this context, that the EEG-surcharge is not a State resource and that even a waiver of those resources by the special compensation regime cannot therefore constitute a measure granted through State resources.

— The EEG-surcharge is not collected, administered or even allocated by the State or by a public or private institution nominated or established by the State. Instead, the EEG-surcharge can be directly collected by the transmission system operators on the basis of a corresponding entitlement under civil law. The EEG-surcharge does not benefit the State budget, and consequently the special compensation regime in no way indirectly or directly reduces State revenue.

— The EEG-resources are also not available to State authorities. There is also no public control over the EEG-resources, such as by the Bundesamt für Wirtschaft und Ausfuhrkontrolle (Federal Office of Economics and Export Control, BAFA) or the Bundesnetzagentur (Federal Network Agency).

Action brought on 29 April 2014 — Buderus Guss v Commission

(Case T-302/14)

(2014/C 223/53)

Language of the case: German

Parties

Applicant: Buderus Guss GmbH (Breidenbach, Germany) (represented by: D. Greinacher, J. Martin and B. Scholtka, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul, in accordance with the first paragraph of Article 263 TFEU, the Commission's decision to initiate the formal investigation procedure in relation to the support for the generation of electricity from renewable energy sources and from mine gas in accordance with the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources, 'EEG') and the reduced EEG-surcharge for energy-intensive users against the Federal Republic of Germany — State aid SA.33995 (2013/C) (ex 2013/NN) of 18 December 2013, published in the Official Journal of the EU on 7 February 2014 (OJ 2014 C 37, p. 73), in so far as the Commission classifies the special compensation regime pursuant to Paragraphs 40 and 41 of the EEG as State aid within the meaning of Article 107 TFEU;

— order the Commission to pay the costs necessarily incurred pursuant to Article 87(3) of the Rules of Procedure of the General Court.

Pleas in law and main arguments

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

1. First plea in law: Infringement of Article 107 TFEU

The applicant claims that the Commission wrongly classified the support for renewable energies by way of the surcharge system and the special compensation regime to reduce the EEG-surcharge as aid and therefore should not have initiated the formal investigation procedure.

— In this connection, the applicant contends that the Commission made a manifest error of assessment in the preliminary assessment of the issue of whether the special compensation regime constitutes aid, since the special compensation regime, as an exception to the EEG-surcharge, does not grant any advantage which energy-intensive users would not have obtained under normal market conditions.

— The applicant also claims that no State resources are affected. Since the proceeds from the EEG-surcharge already did not constitute State resources, no State resources could be affected even by the exception for energy-intensive users.

— The applicant further claims that the special compensation regime also does not distort competition. At most, it establishes the competitive conditions which exist without the EEG-surcharge.

2. Second plea in law: Infringement of the principle of the protection of legitimate expectations

The applicant claims that, by adopting the decision, the Commission also infringes the principle of the protection of legitimate expectations. The German scheme to support renewable energy has already been subject to a thorough State aid assessment. In that assessment, the Commission in 2002 concluded that a transfer of State resources is not linked to that scheme. Since the 2012 EEG does not, in this respect, contain any substantial amendments to the legal position at the time, the economic operators concerned ought not to have expected a re-examination, but should have been entitled to rely on the continuance of the scheme.

3. Third plea in law: Misuse of powers

Lastly, the applicant considers that the Commission misused the discretion afforded to it under Articles 107 and 108 TFEU. By initiating the investigation procedure, the Commission is primarily pursuing the objective of fundamentally harmonising the support for renewable electricity. That fundamental objective is also evidenced by the new draft guidelines for environmental and energy aid, in which the Commission for the first time lays down detailed schemes to support renewable energies. In order to work towards a harmonisation, the Commission would, however, have to apply the procedure for approximating laws pursuant to Articles 116 and 117 TFEU, which is laid down for that purpose.

Action brought on 29 April 2014 — Polyblend v Commission

(Case T-303/14)

(2014/C 223/54)

Language of the case: German

Parties

Applicant: Polyblend GmbH (Bad Sobernheim, Germany) (represented by: D. Greinacher, J. Martin and B. Scholtka, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul, in accordance with the first paragraph of Article 263 TFEU, the Commission's decision to initiate the formal investigation procedure in relation to the support for the generation of electricity from renewable energy sources and from mine gas in accordance with the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources, 'EEG') and the reduced EEG-surcharge for energy-intensive users against the Federal Republic of Germany — State aid SA.33995 (2013/C) (ex 2013/NN) of 18 December 2013, published in the Official Journal of the EU on 7 February 2014 (OJ 2014 C 37, p. 73), in so far as the Commission classifies the special compensation regime pursuant to Paragraphs 40 and 41 of the EEG as State aid within the meaning of Article 107 TFEU;

— order the Commission to pay the costs necessarily incurred pursuant to Article 87(3) of the Rules of Procedure of the General Court.

Pleas in law and main arguments

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

1. First plea in law: Infringement of Article 107 TFEU

The applicant claims that the Commission wrongly classified the support for renewable energies by way of the surcharge system and the special compensation regime to reduce the EEG-surcharge as aid and therefore should not have initiated the formal investigation procedure.

— In this connection, the applicant contends that the Commission made a manifest error of assessment in the preliminary assessment of the issue of whether the special compensation regime constitutes aid, since the special compensation regime, as an exception to the EEG-surcharge, does not grant any advantage which energy-intensive users would not have obtained under normal market conditions.

— The applicant also claims that no State resources are affected. Since the proceeds from the EEG-surcharge already did not constitute State resources, no State resources could be affected even by the exception for energy-intensive users.

— The applicant further claims that the special compensation regime also does not distort competition. At most, it establishes the competitive conditions which exist without the EEG-surcharge.

2. Second plea in law: Infringement of the principle of the protection of legitimate expectations

The applicant claims that, by adopting the decision, the Commission also infringes the principle of the protection of legitimate expectations. The German scheme to support renewable energy has already been subject to a thorough State aid assessment. In that assessment, the Commission in 2002 concluded that a transfer of State resources is not linked to that scheme. Since the 2012 EEG does not, in this respect, contain any substantial amendments to the legal position at the time, the economic operators concerned ought not to have expected a re-examination, but should have been entitled to rely on the continuance of the scheme.

3. Third plea in law: Misuse of powers

Lastly, the applicant considers that the Commission misused the discretion afforded to it under Articles 107 and 108 TFEU. By initiating the investigation procedure, the Commission is primarily pursuing the objective of fundamentally harmonising the support for renewable electricity. That fundamental objective is also evidenced by the new draft guidelines for environmental and energy aid, in which the Commission for the first time lays down detailed schemes to support renewable energies. In order to work towards a harmonisation, the Commission would, however, have to apply the procedure for approximating laws pursuant to Articles 116 and 117 TFEU, which is laid down for that purpose.

Action brought on 29 April 2014 — Sun Alloys Europe v Commission

(Case T-304/14)

(2014/C 223/55)

Language of the case: German

Parties

Applicant: Sun Alloys Europe GmbH (Bad Sobernheim, Germany) (represented by: D. Greinacher, J. Martin and B. Scholtka, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul, in accordance with the first paragraph of Article 263 TFEU, the Commission's decision to initiate the formal investigation procedure in relation to the support for the generation of electricity from renewable energy sources and from mine gas in accordance with the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources, 'EEG') and the reduced EEG-surcharge for energy-intensive users against the Federal Republic of Germany — State aid SA.33995 (2013/C) (ex 2013/NN) of 18 December 2013, published in the Official Journal of the EU on 7 February 2014 (OJ 2014 C 37, p. 73), in so far as the Commission classifies the special compensation regime pursuant to Paragraphs 40 and 41 of the EEG as State aid within the meaning of Article 107 TFEU;

— order the Commission to pay the costs necessarily incurred pursuant to Article 87(3) of the Rules of Procedure of the General Court.

Pleas in law and main arguments

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

1. First plea in law: Infringement of Article 107 TFEU

   The applicant claims that the Commission wrongly classified the support for renewable energies by way of the surcharge system and the special compensation regime to reduce the EEG-surcharge as aid and therefore should not have initiated the formal investigation procedure.

   — In this connection, the applicant contends that the Commission made a manifest error of assessment in the preliminary assessment of the issue of whether the special compensation regime constitutes aid, since the special compensation regime, as an exception to the EEG-surcharge, does not grant any advantage which energy-intensive users would not have obtained under normal market conditions.

   — The applicant also claims that no State resources are affected. Since the proceeds from the EEG-surcharge already did not constitute State resources, no State resources could be affected even by the exception for energy-intensive users.

   — The applicant further claims that the special compensation regime also does not distort competition. At most, it establishes the competitive conditions which exist without the EEG-surcharge.

2. Second plea in law: Infringement of the principle of the protection of legitimate expectations

   The applicant claims that, by adopting the decision, the Commission also infringes the principle of the protection of legitimate expectations. The German scheme to support renewable energy has already been subject to a thorough State aid assessment. In that assessment, the Commission in 2002 concluded that a transfer of State resources is not linked to that scheme. Since the 2012 EEG does not, in this respect, contain any substantial amendments to the legal position at the time, the economic operators concerned ought not to have expected a re-examination, but should have been entitled to rely on the continuance of the scheme.

3. Third plea in law: Misuse of powers

   Lastly, the applicant considers that the Commission misused the discretion afforded to it under Articles 107 and 108 TFEU. By initiating the investigation procedure, the Commission is primarily pursuing the objective of fundamentally harmonising the support for renewable electricity. That fundamental objective is also evidenced by the new draft guidelines for environmental and energy aid, in which the Commission for the first time lays down detailed schemes to support renewable energies. In order to work towards a harmonisation, the Commission would, however, have to apply the procedure for approximating laws pursuant to Articles 116 and 117 TFEU, which is laid down for that purpose.

Action brought on 29 April 2014 — Vestolit v Commission

(Case T-305/14)

(2014/C 223/56)

Language of the case: German

Parties

Applicant: Vestolit GmbH (Marl, Germany) (represented by: D. Greinacher, J. Martin and B. Scholtka, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul, in accordance with the first paragraph of Article 263 TFEU, the Commission's decision to initiate the formal investigation procedure in relation to the support for the generation of electricity from renewable energy sources and from mine gas in accordance with the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources, 'EEG') and the reduced EEG-surcharge for energy-intensive users against the Federal Republic of Germany — State aid SA.33995 (2013/C) (ex 2013/NN) of 18 December 2013, published in the Official Journal of the EU on 7 February 2014 (OJ 2014 C 37, p. 73), in so far as the Commission classifies the special compensation regime pursuant to Paragraphs 40 and 41 of the EEG as State aid within the meaning of Article 107 TFEU;

— order the Commission to pay the costs necessarily incurred pursuant to Article 87(3) of the Rules of Procedure of the General Court.

Pleas in law and main arguments

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

1. First plea in law: Infringement of Article 107 TFEU

   The applicant claims that the Commission wrongly classified the support for renewable energies by way of the surcharge system and the special compensation regime to reduce the EEG-surcharge as aid and therefore should not have initiated the formal investigation procedure.

   — In this connection, the applicant contends that the Commission made a manifest error of assessment in the preliminary assessment of the issue of whether the special compensation regime constitutes aid, since the special compensation regime, as an exception to the EEG-surcharge, does not grant any advantage which energy-intensive users would not have obtained under normal market conditions.

   — The applicant also claims that no State resources are affected. Since the proceeds from the EEG-surcharge already did not constitute State resources, no State resources could be affected even by the exception for energy-intensive users.

   — The applicant further claims that the special compensation regime also does not distort competition. At most, it establishes the competitive conditions which exist without the EEG-surcharge.

2. Second plea in law: Infringement of the principle of the protection of legitimate expectations

   The applicant claims that, by adopting the decision, the Commission also infringes the principle of the protection of legitimate expectations. The German scheme to support renewable energy has already been subject to a thorough State aid assessment. In that assessment, the Commission in 2002 concluded that a transfer of State resources is not linked to that scheme. Since the 2012 EEG does not, in this respect, contain any substantial amendments to the legal position at the time, the economic operators concerned ought not to have expected a re-examination, but should have been entitled to rely on the continuance of the scheme.

3. Third plea in law: Misuse of powers

Lastly, the applicant considers that the Commission misused the discretion afforded to it under Articles 107 and 108 TFEU. By initiating the investigation procedure, the Commission is primarily pursuing the objective of fundamentally harmonising the support for renewable electricity. That fundamental objective is also evidenced by the new draft guidelines for environmental and energy aid, in which the Commission for the first time lays down detailed schemes to support renewable energies. In order to work towards a harmonisation, the Commission would, however, have to apply the procedure for approximating laws pursuant to Articles 116 and 117 TFEU, which is laid down for that purpose.

Action brought on 30 April 2014 — Polymer-Chemie v Commission

(Case T-306/14)

(2014/C 223/57)

Language of the case: German

Parties

Applicant: Polymer-Chemie GmbH (Sobernheim, Germany) (represented by: D. Greinacher, J. Martin and B. Scholtka, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul, in accordance with the first paragraph of Article 263 TFEU, the Commission's decision to initiate the formal investigation procedure in relation to the support for the generation of electricity from renewable energy sources and from mine gas in accordance with the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources, 'EEG') and the reduced EEG-surcharge for energy-intensive users against the Federal Republic of Germany — State aid SA.33995 (2013/C) (ex 2013/NN) of 18 December 2013, published in the Official Journal of the EU on 7 February 2014 (OJ 2014 C 37, p. 73), in so far as the Commission classifies the special compensation regime pursuant to Paragraphs 40 and 41 of the EEG as State aid within the meaning of Article 107 TFEU;

— order the Commission to pay the costs necessarily incurred pursuant to Article 87(3) of the Rules of Procedure of the General Court.

Pleas in law and main arguments

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

1. First plea in law: Infringement of Article 107 TFEU

The applicant claims that the Commission wrongly classified the support for renewable energies by way of the surcharge system and the special compensation regime to reduce the EEG-surcharge as aid and therefore should not have initiated the formal investigation procedure.

— In this connection, the applicant contends that the Commission made a manifest error of assessment in the preliminary assessment of the issue of whether the special compensation regime constitutes aid, since the special compensation regime, as an exception to the EEG-surcharge, does not grant any advantage which energy-intensive users would not have obtained under normal market conditions.

— The applicant also claims that no State resources are affected. Since the proceeds from the EEG-surcharge already did not constitute State resources, no State resources could be affected even by the exception for energy-intensive users.

— The applicant further claims that the special compensation regime also does not distort competition. At most, it establishes the competitive conditions which exist without the EEG-surcharge.

2. Second plea in law: Infringement of the principle of the protection of legitimate expectations

The applicant claims that, by adopting the decision, the Commission also infringes the principle of the protection of legitimate expectations. The German scheme to support renewable energy has already been subject to a thorough State aid assessment. In that assessment, the Commission in 2002 concluded that a transfer of State resources is not linked to that scheme. Since the 2012 EEG does not, in this respect, contain any substantial amendments to the legal position at the time, the economic operators concerned ought not to have expected a re-examination, but should have been entitled to rely on the continuance of the scheme.

3. Third plea in law: Misuse of powers

Lastly, the applicant considers that the Commission misused the discretion afforded to it under Articles 107 and 108 TFEU. By initiating the investigation procedure, the Commission is primarily pursuing the objective of fundamentally harmonising the support for renewable electricity. That fundamental objective is also evidenced by the new draft guidelines for environmental and energy aid, in which the Commission for the first time lays down detailed schemes to support renewable energies. In order to work towards a harmonisation, the Commission would, however, have to apply the procedure for approximating laws pursuant to Articles 116 and 117 TFEU, which is laid down for that purpose.

Action brought on 30 April 2014 — TechnoCompound v Commission

(Case T-307/14)

(2014/C 223/58)

Language of the case: German

Parties

Applicant: TechnoCompound GmbH (Bad Sobernheim, Germany) (represented by: D. Greinacher, J. Martin and B. Scholtka, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul, in accordance with the first paragraph of Article 263 TFEU, the Commission's decision to initiate the formal investigation procedure in relation to the support for the generation of electricity from renewable energy sources and from mine gas in accordance with the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources, 'EEG') and the reduced EEG-surcharge for energy-intensive users against the Federal Republic of Germany — State aid SA.33995 (2013/C) (ex 2013/NN) of 18 December 2013, published in the Official Journal of the EU on 7 February 2014 (OJ 2014 C 37, p. 73), in so far as the Commission classifies the special compensation regime pursuant to Paragraphs 40 and 41 of the EEG as State aid within the meaning of Article 107 TFEU;

— order the Commission to pay the costs necessarily incurred pursuant to Article 87(3) of the Rules of Procedure of the General Court.

Pleas in law and main arguments

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

1. First plea in law: Infringement of Article 107 TFEU

The applicant claims that the Commission wrongly classified the support for renewable energies by way of the surcharge system and the special compensation regime to reduce the EEG-surcharge as aid and therefore should not have initiated the formal investigation procedure.

— In this connection, the applicant contends that the Commission made a manifest error of assessment in the preliminary assessment of the issue of whether the special compensation regime constitutes aid, since the special compensation regime, as an exception to the EEG-surcharge, does not grant any advantage which energy-intensive users would not have obtained under normal market conditions.

— The applicant also claims that no State resources are affected. Since the proceeds from the EEG-surcharge already did not constitute State resources, no State resources could be affected even by the exception for energy-intensive users.

— The applicant further claims that the special compensation regime also does not distort competition. At most, it establishes the competitive conditions which exist without the EEG-surcharge.

2. Second plea in law: Infringement of the principle of the protection of legitimate expectations

The applicant claims that, by adopting the decision, the Commission also infringes the principle of the protection of legitimate expectations. The German scheme to support renewable energy has already been subject to a thorough State aid assessment. In that assessment, the Commission in 2002 concluded that a transfer of State resources is not linked to that scheme. Since the 2012 EEG does not, in this respect, contain any substantial amendments to the legal position at the time, the economic operators concerned ought not to have expected a re-examination, but should have been entitled to rely on the continuance of the scheme.

3. Third plea in law: Misuse of powers

Lastly, the applicant considers that the Commission misused the discretion afforded to it under Articles 107 and 108 TFEU. By initiating the investigation procedure, the Commission is primarily pursuing the objective of fundamentally harmonising the support for renewable electricity. That fundamental objective is also evidenced by the new draft guidelines for environmental and energy aid, in which the Commission for the first time lays down detailed schemes to support renewable energies. In order to work towards a harmonisation, the Commission would, however, have to apply the procedure for approximating laws pursuant to Articles 116 and 117 TFEU, which is laid down for that purpose.

Action brought on 30 April 2014 — Neue Halberg-Guss v Commission

(Case T-308/14)

(2014/C 223/59)

Language of the case: German

Parties

Applicant: Neue Halberg-Guss GmbH (Saarbrücken, Germany) (represented by: D. Greinacher, J. Martin and B. Scholtka, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul, in accordance with the first paragraph of Article 263 TFEU, the Commission's decision to initiate the formal investigation procedure in relation to the support for the generation of electricity from renewable energy sources and from mine gas in accordance with the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources, 'EEG') and the reduced EEG-surcharge for energy-intensive users against the Federal Republic of Germany — State aid SA.33995 (2013/C) (ex 2013/NN) of 18 December 2013, published in the Official Journal of the EU on 7 February 2014 (OJ 2014 C 37, p. 73), in so far as the Commission classifies the special compensation regime pursuant to Paragraphs 40 and 41 of the EEG as State aid within the meaning of Article 107 TFEU;

— order the Commission to pay the costs necessarily incurred pursuant to Article 87(3) of the Rules of Procedure of the General Court.

Pleas in law and main arguments

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

1. First plea in law: Infringement of Article 107 TFEU

The applicant claims that the Commission wrongly classified the support for renewable energies by way of the surcharge system and the special compensation regime to reduce the EEG-surcharge as aid and therefore should not have initiated the formal investigation procedure.

— In this connection, the applicant contends that the Commission made a manifest error of assessment in the preliminary assessment of the issue of whether the special compensation regime constitutes aid, since the special compensation regime, as an exception to the EEG-surcharge, does not grant any advantage which energy-intensive users would not have obtained under normal market conditions.

— The applicant also claims that no State resources are affected. Since the proceeds from the EEG-surcharge already did not constitute State resources, no State resources could be affected even by the exception for energy-intensive users.

— The applicant further claims that the special compensation regime also does not distort competition. At most, it establishes the competitive conditions which exist without the EEG-surcharge.

2. Second plea in law: Infringement of the principle of the protection of legitimate expectations

The applicant claims that, by adopting the decision, the Commission also infringes the principle of the protection of legitimate expectations. The German scheme to support renewable energy has already been subject to a thorough State aid assessment. In that assessment, the Commission in 2002 concluded that a transfer of State resources is not linked to that scheme. Since the 2012 EEG does not, in this respect, contain any substantial amendments to the legal position at the time, the economic operators concerned ought not to have expected a re-examination, but should have been entitled to rely on the continuance of the scheme.

3. Third plea in law: Misuse of powers

Lastly, the applicant considers that the Commission misused the discretion afforded to it under Articles 107 and 108 TFEU. By initiating the investigation procedure, the Commission is primarily pursuing the objective of fundamentally harmonising the support for renewable electricity. That fundamental objective is also evidenced by the new draft guidelines for environmental and energy aid, in which the Commission for the first time lays down detailed schemes to support renewable energies. In order to work towards a harmonisation, the Commission would, however, have to apply the procedure for approximating laws pursuant to Articles 116 and 117 TFEU, which is laid down for that purpose.

Action brought on 30 April 2014 — Mat Foundries Europe v Commission

(Case T-309/14)

(2014/C 223/60)

Language of the case: German

Parties

Applicant: Mat Foundries Europe GmbH (Neunkirchen, Germany) (represented by: D. Greinacher, J. Martin and B. Scholtka, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul, in accordance with the first paragraph of Article 263 TFEU, the Commission's decision to initiate the formal investigation procedure in relation to the support for the generation of electricity from renewable energy sources and from mine gas in accordance with the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources, 'EEG') and the reduced EEG-surcharge for energy-intensive users against the Federal Republic of Germany — State aid SA.33995 (2013/C) (ex 2013/NN) of 18 December 2013, published in the Official Journal of the EU on 7 February 2014 (OJ 2014 C 37, p. 73), in so far as the Commission classifies the special compensation regime pursuant to Paragraphs 40 and 41 of the EEG as State aid within the meaning of Article 107 TFEU;

— order the Commission to pay the costs necessarily incurred pursuant to Article 87(3) of the Rules of Procedure of the General Court.

Pleas in law and main arguments

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

1. First plea in law: Infringement of Article 107 TFEU

   The applicant claims that the Commission wrongly classified the support for renewable energies by way of the surcharge system and the special compensation regime to reduce the EEG-surcharge as aid and therefore should not have initiated the formal investigation procedure.

   — In this connection, the applicant contends that the Commission made a manifest error of assessment in the preliminary assessment of the issue of whether the special compensation regime constitutes aid, since the special compensation regime, as an exception to the EEG-surcharge, does not grant any advantage which energy-intensive users would not have obtained under normal market conditions.

   — The applicant also claims that no State resources are affected. Since the proceeds from the EEG-surcharge already did not constitute State resources, no State resources could be affected even by the exception for energy-intensive users.

   — The applicant further claims that the special compensation regime also does not distort competition. At most, it establishes the competitive conditions which exist without the EEG-surcharge.

2. Second plea in law: Infringement of the principle of the protection of legitimate expectations

   The applicant claims that, by adopting the decision, the Commission also infringes the principle of the protection of legitimate expectations. The German scheme to support renewable energy has already been subject to a thorough State aid assessment. In that assessment, the Commission in 2002 concluded that a transfer of State resources is not linked to that scheme. Since the 2012 EEG does not, in this respect, contain any substantial amendments to the legal position at the time, the economic operators concerned ought not to have expected a re-examination, but should have been entitled to rely on the continuance of the scheme.

3. Third plea in law: Misuse of powers

   Lastly, the applicant considers that the Commission misused the discretion afforded to it under Articles 107 and 108 TFEU. By initiating the investigation procedure, the Commission is primarily pursuing the objective of fundamentally harmonising the support for renewable electricity. That fundamental objective is also evidenced by the new draft guidelines for environmental and energy aid, in which the Commission for the first time lays down detailed schemes to support renewable energies. In order to work towards a harmonisation, the Commission would, however, have to apply the procedure for approximating laws pursuant to Articles 116 and 117 TFEU, which is laid down for that purpose.

Action brought on 30 April 2014 — Fritz Winter Eisengießerei v Commission

(Case T-310/14)

(2014/C 223/61)

Language of the case: German

Parties

Applicant: Fritz Winter Eisengießerei GmbH & Co. KG (Stadallendorf, Germany) (represented by: D. Greinacher, J. Martin and B. Scholtka, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul, in accordance with the first paragraph of Article 263 TFEU, the Commission's decision to initiate the formal investigation procedure in relation to the support for the generation of electricity from renewable energy sources and from mine gas in accordance with the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources, 'EEG') and the reduced EEG-surcharge for energy-intensive users against the Federal Republic of Germany — State aid SA.33995 (2013/C) (ex 2013/NN) of 18 December 2013, published in the Official Journal of the EU on 7 February 2014 (OJ 2014 C 37, p. 73), in so far as the Commission classifies the special compensation regime pursuant to Paragraphs 40 and 41 of the EEG as State aid within the meaning of Article 107 TFEU;

— order the Commission to pay the costs necessarily incurred pursuant to Article 87(3) of the Rules of Procedure of the General Court.

Pleas in law and main arguments

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

1. First plea in law: Infringement of Article 107 TFEU

   The applicant claims that the Commission wrongly classified the support for renewable energies by way of the surcharge system and the special compensation regime to reduce the EEG-surcharge as aid and therefore should not have initiated the formal investigation procedure.

   — In this connection, the applicant contends that the Commission made a manifest error of assessment in the preliminary assessment of the issue of whether the special compensation regime constitutes aid, since the special compensation regime, as an exception to the EEG-surcharge, does not grant any advantage which energy-intensive users would not have obtained under normal market conditions.

   — The applicant also claims that no State resources are affected. Since the proceeds from the EEG-surcharge already did not constitute State resources, no State resources could be affected even by the exception for energy-intensive users.

   — The applicant further claims that the special compensation regime also does not distort competition. At most, it establishes the competitive conditions which exist without the EEG-surcharge.

2. Second plea in law: Infringement of the principle of the protection of legitimate expectations

   The applicant claims that, by adopting the decision, the Commission also infringes the principle of the protection of legitimate expectations. The German scheme to support renewable energy has already been subject to a thorough State aid assessment. In that assessment, the Commission in 2002 concluded that a transfer of State resources is not linked to that scheme. Since the 2012 EEG does not, in this respect, contain any substantial amendments to the legal position at the time, the economic operators concerned ought not to have expected a re-examination, but should have been entitled to rely on the continuance of the scheme.

3. Third plea in law: Misuse of powers

   Lastly, the applicant considers that the Commission misused the discretion afforded to it under Articles 107 and 108 TFEU. By initiating the investigation procedure, the Commission is primarily pursuing the objective of fundamentally harmonising the support for renewable electricity. That fundamental objective is also evidenced by the new draft guidelines for environmental and energy aid, in which the Commission for the first time lays down detailed schemes to support renewable energies. In order to work towards a harmonisation, the Commission would, however, have to apply the procedure for approximating laws pursuant to Articles 116 and 117 TFEU, which is laid down for that purpose.

Action brought on 5 May 2014 — Christian Dior Couture v OHIM (Representation of a repetitive pattern with a raised effect)

(Case T-313/14)

(2014/C 223/62)

Language of the case: French

Parties

Applicant: Christian Dior Couture SA (Paris, France) (represented by M. Sabatier, lawyer)

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

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market of 4 March 2014 in Case R 459/2013-4, in so far as it dismissed the appeal brought against the Examiner's decision, which refuses the protection of the Community trade mark system in respect of the international registration covering the European Union of the figurative mark No 1 100 187 to designate some of the products in Classes 9, 14, 18 and 25;

— allow the registration of the figurative mark No 1 100 187 to designate all the products in Classes 9, 14, 18 and 25, and in the alternative to designate the products whose use has been expressly proven;

— order OHIM to pay the costs incurred by the applicant in the proceedings before OHIM and in the present action, pursuant to Article 87 of the Rules of Procedure of the General Court

Pleas in law and main arguments

Community trade mark concerned: International registration designating the European Union of the figurative mark representing a repetitive pattern with a raised effect in respect of the products in Classes 9, 14, 18 and 25

Decision of the Examiner: Partial refusal of the application

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: Infringement of Article 7(1)(b) and 7(3) of Regulation No 207/2009

Action brought on 2 May 2014 — Vinnolit v Commission

(Case T-318/14)

(2014/C 223/63)

Language of the case: German

Parties

Applicant: Vinnolit GmbH & Co. KG (Ismaning, Germany) (represented by: M. Geipel, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Commission of 18 December 2013 in cases SA.33995 (2013/C) (ex 2013/NN), in so far as it concerns the reduced EEG-surcharge for energy-intensive users;

— order the defendant to bear its own costs and to pay those incurred by the applicant.

Pleas in law and main arguments

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

1. First plea in law: No aid within the meaning of Article 107 TFEU

   — The applicant claims that the reduction of the EEG-surcharge for energy-intensive users, provided for in the Gesetz für den Vorrang erneuerbarer Energien (Law for the priority of renewable energy sources, hereinafter referred to as EEG), constitutes a modification of a civil law compensation mechanism. No advantage through State resources or State-controlled resources is granted.

2. Second plea in law: In any event, no new aid

   — The applicant also claims that the reduced EEG-surcharge for energy-intensive users does not constitute new aid for the purposes of Article 108 TFEU because the financing mechanism for the support of renewable energies in the Federal Republic of Germany has, in the past, been classified by the European Commission as compatible with the law on State aid and has not been substantially modified thus far.

3. Third plea in law: Infringement of fundamental rights and the principle of proportionality

   — The applicant submits in that regard that the European Commission did not exercise, or incorrectly exercised, the discretion available to it because it (i) did not take into account the considerable adverse effects for the users concerned, which are associated with the initiation of the formal investigation procedure, and (ii) initiated the investigation procedure at a time when it was not yet necessary.

4. Fourth plea in law: Infringement of the principle of the protection of legitimate expectations

   — The applicant claims that, by its decision, the European Commission infringed the legitimate expectations of the users concerned because the financing mechanism for the support of renewable energies in the Federal Republic of Germany has, in the past, been classified by the European Commission as compatible with the law on State aid and has not been substantially modified since.

5. Fifth plea in law: Misuse of powers

   — Lastly, the applicant claims that, by its decision, the European Commission misused the powers conferred on it by unduly reducing the margin of discretion conferred upon the Federal Republic of Germany under primary and secondary law as regards the manner in which support for renewable energies is organised.

Action brought on 12 May 2014 — Azarov v Council

(Case T-331/14)

(2014/C 223/64)

Language of the case: German

Parties

Applicant: Mykola Yanovych Azarov (Kiev, Ukraine) (represented by: G. Lansky and A. Egger, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Annul, pursuant to Article 263 TFEU, Council Decision 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2014 L 66, p. 26) and Council Regulation (EU) No 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2014 L 66, p. 1), in so far as they concern the applicant;

— Prescribe, pursuant to Article 64 of the Rules of Procedure of the General Court, measures of organisation of procedure;

— Order the Council, pursuant to Article 87(2) of the Rules of Procedure, to pay the costs.

Pleas in law and main arguments

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

1. First plea in law: Infringement of the obligation to state reasons

   In this regard, the applicant submits inter alia that the statement of reasons for the contested acts do not make it possible either for him to challenge those acts before the Court or for the Court to review their legality.

2. Second plea in law: Infringement of fundamental rights

   In the context of this plea in law, the applicant invokes infringement of the right to property and infringement of the right to exercise an economic activity. He also complains that the restrictive measures imposed are disproportionate. Lastly, he submits that there has been infringement of his rights of the defence.

3. Third plea in law: Misuse of powers

   In this regard, the applicant submits inter alia that the Council misused its powers because the imposition of restrictive measures against him predominantly pursued objectives other than those of actually consolidating and supporting the rule of law and respect for human rights in Ukraine.

4. Fourth plea in law: Infringement of the principle of good administration

   In the context of this plea in law, the applicant complains in particular of infringement of the right to impartial treatment, infringement of the right to just or fair treatment and infringement of the right to a careful investigation of the facts.

5. Fifth plea in law: Manifest error of assessment.

Action brought on 12 May 2014 — Azarov v Council

(Case T-332/14)

(2014/C 223/65)

Language of the case: German

Parties

Applicant: Oleksii Mykolayovych Azarov (Kiev, Ukraine) (represented by: G. Lansky and A. Egger, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Annul, pursuant to Article 263 TFEU, Council Decision 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2014 L 66, p. 26), Council Implementing Decision 2014/216/CFSP of 14 April 2014 implementing Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2014 L 111, p. 91), Council Regulation (EU) No 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2014 L 66, p. 1) and Council Implementing Regulation (EU) No 381/2014 of 14 April 2014 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ 2014 L 111, p. 33), in so far as they concern the applicant;

— Prescribe, pursuant to Article 64 of the Rules of Procedure of the General Court, measures of organisation of procedure;

— Order the Council, pursuant to Article 87(2) of the Rules of Procedure, to pay the costs.

Pleas in law and main arguments

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

1. First plea in law: Infringement of the obligation to state reasons

   In this regard, the applicant submits inter alia that the statement of reasons for the contested acts do not make it possible either for him to challenge those acts before the Court or for the Court to review their legality.

2. Second plea in law: Infringement of fundamental rights

   In the context of this plea in law, the applicant invokes infringement of the right to property and infringement of the right to exercise an economic activity. He also complains that the restrictive measures imposed are disproportionate. Lastly, he submits that there has been infringement of his rights of the defence.

3. Third plea in law: Misuse of powers

   In this regard, the applicant submits inter alia that the Council misused its powers because the imposition of restrictive measures against him predominantly pursued objectives other than those of actually consolidating and supporting the rule of law and respect for human rights in Ukraine.

4. Fourth plea in law: Infringement of the principle of good administration

   In the context of this plea in law, the applicant complains in particular of infringement of the right to impartial treatment, infringement of the right to just or fair treatment and infringement of the right to a careful investigation of the facts.

5. Fifth plea in law: Manifest error of assessment

Action brought on 30 May 2014 — STC v Commission

(Case T-355/14)

(2014/C 223/66)

Language of the case: Italian

Parties

Applicant: STC SpA (Forlì, Italy) (represented by: A. Marelli and G. Delucca, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the contested decisions, with all legal consequences, and, in particular, in that connection:

— order the Contracting Authority to provide compensation for the damage caused by the unlawful decisions taken, either in the specific form requested — that is, reappraisal in favour of the applicant — or in the form of any other equivalent action and, in the latter case, to pay compensation for loss of business profits and for 'curricular' damage amounting to 15 % of the price indicated in the applicant's tender or — in the alternative — 15 % of the value of the contract, or otherwise — as appropriate — a larger or smaller sum considered to be equitable, with the addition, in any event, of compensatory interest in respect of damage caused by delay, and, in addition:

— order the Commission to pay all procedural costs, including incidental and sundry expenses and any other statutory costs, subject to quantification.

Pleas in law and main arguments

The present action is brought against (i) the decision of the Maintenance and Utilities Unit of the Ispra Site Management Directorate of the Joint Research Centre Directorate-General of the European Commission, communicated by way of Note Ares(2014)1041060 of 3 April 2014, to give a negative assessment in respect of the tender submitted by the applicant in Tendering Procedure JRC IPR 2013 C04 0031 OC, (ii) the decision to award the contract to another company, and (iii) the decision to refuse the applicant's request for access to the tender documents.

The contract in question was for the executive design, supply of equipment and construction of a new turbo-gas tri-generation plant, with ordinary and extraordinary maintenance scheduled for a period of six years, the first two years being under guarantee.

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

1. First plea in law, alleging a failure to acknowledge the applicant's right to access tender documents. In this regard, the applicant alleges infringement of:

   — Articles 42 and 47 of the Charter of Fundamental Rights of the European Union;

   — the right to access tender documents, given the lack of access to (i) the ranking list for the tendering procedure, (ii) the scores obtained by the other candidates, and (iii) the full text of the report on the assessment of the applicant; and

— the rights of the defence and the right to an effective remedy.

2. Second plea in law, concerning the financial tender submitted by the applicant. In this regard, the applicant alleges:

— infringement of Article 296 TFEU, owing to a contradictory and inadequate statement of reasons;

— infringement of the right to good administration as described in Article 41(2) of the Charter of Fundamental Rights of the European Union;

— infringement of Article 112(1) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ 2012 L 298, p. 1);

— infringement of Article 160(3) of Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ 2012 L 362, p. 1); and

— failure to observe the principles of equal treatment and transparency at the stage of assessing the tenders with a view to awarding the contract, and failure to ensure that all tenderers had an equal chance.

3. Third plea in law, concerning the technical tender submitted by the applicant. In this regard, the applicant alleges:

— infringement of Article 296 TFEU, owing to a contradictory and inadequate statement of reasons;

— infringement of the right to good administration as described in Article 41(2) of the Charter of Fundamental Rights of the European Union;

— infringement of Article 112(1) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ 2012 L 298, p. 1);

— infringement of Articles 139(1) and 160(3) of Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ 2012 L 362, p. 1); and

— failure to observe the principle of transparency, and infringement of Article 16 of the Charter of Fundamental Rights of the European Union.

The applicant also claims that the documentary findings have been distorted.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (Second Chamber) of 16 January 2014 — Guinet v EIB

(Case F-107/12) ([1])

(Civil Service — Staff of the EIB — Pension scheme — Transfer of pension rights — Compensation for the disadvantages resulting from the delay in the transfer of the pension rights — Condition of effective transfer of pension rights acquired in a scheme other than that of the EIB — Principle of equal treatment)

(2014/C 223/67)

Language of the case: French

Parties

Applicant: Philippe Guinet (Luxembourg, Luxembourg) (represented by: L. Levi, lawyer)

Defendant: European Investment Bank (represented by: T. Gilliams, G. Nuvoli, acting as Agents, and D. Waelbroeck and A. Duron, lawyers)

Re:

Application to annul the EIB's implied decision to reject the applicant's request to recalculate his years of pensionable service and an application for damages

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders Mr Guinet to bear his own costs and to pay three-quarters of the costs incurred by the European Investment Bank;*

3. *Orders the European Investment Bank to bear a quarter of its own costs.*

([1]) OJ C 366, 14.11.2012, p. 41.

Judgment of the Civil Service Tribunal (Second Chamber) of 22 May 2014 — CI v Parliament

(Case F-130/12) ([1])

(Civil Service — Remuneration — Family allowances — Dependent child allowance — Double dependent child allowance — Article 67(3) of the Staff Regulations — Conditions for grant — Amicable settlement between the parties after the intervention of the European Ombudsman — Implementation — Duty of care)

(2014/C 223/68)

Language of the case: French

Parties

Applicant: CI (represented by: B. Cortese and A. Salerno, lawyers)

Defendant: European Parliament (represented by: E. Despotopoulou and M. Ecker, acting as Agents)

Re:

Application to annul the decision refusing to grant the double dependant child allowance under Article 67(3) of the Staff Regulations

Operative part of the judgment

The Tribunal:

1. *Annuls the decision of the European Parliament of 5 December 2011 refusing to renew, with effect from 1 June 2008, the double dependent child allowance, and the decision of 20 July 2012 rejecting the claim;*

2. *Dismisses the remainder of the action;*

3. *Orders the European Parliament to bear its own costs and to pay the costs incurred by CI.*

([1]) OJ C 71, 9.3.2013, p. 29.

Judgment of the Civil Service Tribunal (Second Chamber) of 30 January 2014 — Ohrgaard v Commission

(Case F-151/12) ([1])

(Civil Service — Remuneration — Expatriation allowance — Residence condition laid down in Article 4 (1)(b) of Annex VII to the Staff Regulations — Performance of duties in an international organisation — Concept — Work experience period of five months at the Commission — Exclusion)

(2014/C 223/69)

Language of the case: French

Parties

Applicant: Jakob Ohrgaard (Frederiksberg, Denmark) (represented by: S. Orlandi, A. Coolen, J.-N. Louis, É. Marchal and D. de Abreu Caldas, lawyers)

Defendant: European Commission (represented by: J. Currall and V. Joris, acting as Agents)

Re:

Application to annul the decision refusing the applicant the benefit of the expatriation allowance

Operative part of the judgment

The Tribunal:

1. *Annuls the decision of the European Commission of 6 March 2012 refusing Mr Ohrgaard the benefit of the expatriation allowance, as amended by the decision of 31 August 2012 rejecting the claim;*

2. *Orders the European Commission to bear its own costs and to pay the costs incurred by Mr Ohrgaard.*

([1]) OJ C 55, 23.2.2013, p. 26.

Order of the Civil Service Tribunal (Second Chamber) of 14 January 2014 — Lebedef v Commission

(Case F-60/13) ([1])

(Civil Service — Officials — Registration of absences on account of sickness — Irregular absence — Deduction made by the Appointing Authority from annual leave — Application made by e-mail — Knowledge of the person concerned that a decision existed — Failure to open an e-mail and to investigate, by clicking on a hyperlink, the content of that decision — Admissibility — Time-limits — Determination of the date at which the person involved could become aware of the content of the decision)

(2014/C 223/70)

Language of the case: French

Parties

Applicant: Giorgio Lebedef (Senningerberg, Luxembourg) (represented by: F. Frabetti, lawyer)

Defendant: European Commission (represented by: C. Berardis-Kayser and G. Berscheid, acting as Agents)

Re:

Application for annulment of the implied decision to reject the request, made by the applicant on the basis of Article 90(1) of the Staff Regulations, for adjustment of the entries in respect of the applicant's absences on account of sickness in the SysPer2 application.

Operative part of the order

1. *The action is dismissed as manifestly inadmissible.*

2. *Mr Lebedef shall bear his own costs and shall pay the costs incurred by the European Commission.*

([1]) OJ C 274, 21.9.2013, p. 29.

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