Pleas in law and main arguments

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

1. First plea in law, alleging absence of *prima facie* selectivity of the measure

   The applicant submits in the context of the first plea inter alia that the provision in Paragraph 8c(1a) of the German Körperschaftsteuergesetz (KStG) (Law on corporation tax) regarding the fiscal carry forward of losses by undertakings in difficulty, which are taken over by another undertaking with the objective of restructuring, is not selective. In the applicant's view the provision does not constitute State aid for the purposes of Article 107(1) TFEU because it does not lay down any exception to the relevant reference system.

2. Second plea in law, alleging that the provision enabling the fiscal carry forward of losses to allow for the restructuring of companies in difficulty is a general measure

   In that regard the applicant submits inter alia that the technical differentiation on the basis of an undertaking's economic position and ability to pay is a technical provision which, as a general measure, cannot come within the scope of Article 107(1) TFEU. In the applicant's opinion such a provision, in the context of an overall economic assessment, is capable of benefiting all undertakings even if, at a particular point in time, only some undertakings are in fact in a position to actually use the provision.

3. Third plea in law, alleging that the provision is justified on the basis of the nature and general scheme of the tax system

   The applicant submits in this respect that the provision in Paragraph 8c(1a) of the KStG enabling the fiscal carry forward of losses to allow for the restructuring of companies in difficulty is justified on the basis of the nature and general scheme of the tax system and does not constitute State aid for the purposes of Article 107(1) TFEU for that reason also.

Action brought on 6 December 2011 — Royal Scandinavian Casino Århus AS v Commission

(Case T-615/11)

(2012/C 32/72)

Language of the case: Danish

Parties

Applicant: Royal Scandinavian Casino Århus AS I/S (Århus, Denmark) (represented by: B. Jacobi, lawyer)

Defendant: European Commission

Form of order sought

— annul the Commission's decision of 20.09.11 on the measure No C 35/2010 (ex N 302/2010) which Denmark is planning to implement in the form of duties for online gaming in the Danish Gaming Duties Act.

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

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission incorrectly approved the aid on the basis of Article 107(3)(c) TFEU, on the grounds that:

   — Article 107(3)(c) TFEU does not allow for approval of aid to part of an economic area;

   — the aid does not fulfil the requirement in Article 107(3)(c) TFEU that it must facilitate the development of certain economic areas;

   — the aid affects trading conditions in a manner contrary to the common interest, and accordingly

   — the aid does not serve a properly documented purpose of European interest.

   The applicant further submits that the exception in Article 107(3)(c) TFEU must be interpreted restrictively and that that provision does not allow for the grant of State aid on the basis of State financial considerations.

2. Second plea in law, alleging that the Commission approved the aid contrary to the Court's case-law on operating aid. The applicant submits that the aid in question, which is granted as permanent aid in the form of a tax reduction, amounts to operating aid which, according to settled case-law, cannot be approved in a case such as the present one.

3. Third plea in law, alleging that the Commission infringed the proportionality principle, since the objectives of the Danish legislation can be achieved without State aid being granted.

4. Fourth plea in law, alleging the Commission made an incorrect assessment in finding, incorrectly, that the aid is necessary in order to give incentive to online gaming providers to apply for a Danish licence.

5. Fifth plea in law, alleging that the Commission misused its powers by referring to a Treaty provision which gives authority to approve aid intended to facilitate the development of an economic area, whilst, by contrast, it is apparent from the decision that the actual reason for approving the aid is the wish to attract a suitable number of applicants for a Danish online gaming licence. The applicant adds that the Commission misuses its powers when it gives as grounds for the approval the objective of liberalising and facilitating the development of an economic area, whilst the Danish State itself states that the overall objective of the tax scheme is to generate as much tax revenue as possible.

6. Sixth plea in law, alleging that the Commission has failed to provide a sufficient statement of reasons, in that the reasons:

   — are generally inconsistent and self-contradictory on a number of points;

   — fail to provide a sufficient explanation as to how liberalisation of the gaming market is a legitimate purpose to pursue through approvals on the basis of Article 107(3)(c) TFEU;

   — do not give a satisfactory explanation of the Commission's interpretation of Article 107(3)(c) TFEU;

   — do not document the need for State aid or give a sufficient account of taxation in other Member States;

   — lack clarity as to the objectives of the Danish Gaming Duties Act;

   — fail to address Danish legislation covering other forms of gaming;

   — contain no examination or explanation of the effects of the aid on land-based gaming operations.

Action brought on 5 December 2011 — Meyr-Melnhof Karton v OHIM — Stora Enso (SILVAWHITE)

(Case T-617/11)

(2012/C 32/73)

Language in which the application was lodged: English

Parties

Applicant: Meyr-Melnhof Karton AG (Vienna, Austria) (represented by: P. Baronikians and N. Wittich, lawyers)

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

Other party to the proceedings before the Board of Appeal: Stora Enso Oyj (Helsinki, Finland)

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 21 September 2011 in case R 2139/2010-2;

— Reject the opposition against the Community trade mark application No 8197469; and

— Order that the defendant pays the applicant's costs incurred before OHIM and the General Court.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'SILVAWHITE', for goods in class 16 — Community trade mark application No 8197469

Proprietor of the mark or sign cited in the opposition proceedings: The other party to the proceedings before the Board of Appeal

Mark or sign cited in opposition: Finnish trade mark registration No 231953 of the word 'SILVAPRESS', for goods in class 16; International trade mark registration No 872793 of the word 'SILVAPRESS', for goods in class 16

Decision of the Opposition Division: Upheld the opposition in its entirety

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Council Regulation No 207/2009, as the Board of Appeal wrongly ruled that likelihood of confusion exists between the earlier mark and the Community trade mark application.

Appeal brought on 2 December 2011 by Francesca Cervelli against the order of the Civil Service Tribunal of 12 September 2011 in Case F-98/10, Cervelli v Commission

(Case T-622/11 P)

(2012/C 32/74)

Language of the case: French

Parties

Appellant: Francesca Cervelli (Brussels, Belgium) (represented by J. García-Gallardo Gil-Fournier, lawyer)

Other party to the proceedings: European Commission

Form of order sought by the appellant

— Admit the appeal and declare it admissible;

— Regard the appeal as having been brought in the name and for the benefit of Ms Francesca Cervelli by her legal representatives;

— Declare the order delivered on 12 September 2011 by the Civil Service Tribunal void in its entirety;

— Order the matter to be referred back to the Civil Service Tribunal for examination of the substance.

Pleas in law and main arguments

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

   First plea in law, alleging a manifest error in the assessment of the facts, since the CST took the view that the appellant