

Second ground of appeal: in the event that the Court of Justice does not uphold the first ground of appeal, the General Court incorrectly interpreted and applied Article 107(1) TFEU, in relation to the concept of selectivity.

In particular, the appellant submits that the Court erred in considering that its review should be limited to the issue of whether the Commission committed a manifest error of assessment. The General Court erred in that it focused its analysis on whether the parties had ‘manifestly’ succeeded in proving that the Commission erred in its analysis and not on the relevant issue, that is to say whether or not the Commission erred in analysing the selectivity. In any event, even if that were the applicable test, the General Court should have concluded that the Commission committed a manifest error of assessment in examining the requirement of selectivity.

(¹) OJ 2018 C 80, p. 20.

Appeal brought on 18 November 2021 by GABO:mi Gesellschaft für Ablauforganisation:milliarium mbH & Co. KG against the order of the General Court (Fifth Chamber) delivered on 9 September 2021 in Case T-881/19, GABO:mi v Commission

(Case C-696/21 P)

(2022/C 73/16)

Language of the case: English

Parties

Appellant: GABO:mi Gesellschaft für Ablauforganisation:milliarium mbH & Co. KG (represented by: Ch. Mayer, Rechtsanwalt)

Other party to the proceedings: European Commission

Form of order sought

The applicant claims that the Court should:

- set aside the order under appeal insofar as it does not relate to the grant agreements that were signed by REA or IMI-JU (CANCER-ID, DIACAT, EU-AIMS, EUC²LID, EUROFORGEN, ONCOTRACK, RADAR-CNS), and order the defendant to pay EUR 1 304 465,36 plus interests of EUR 74 024,01 to Mr. Ivo-Meinert Willrodt as insolvency administrator for GABO:mi Gesellschaft für Ablauforganisation:milliarium mbH & Co. KG;
- in the alternative, set aside the order under appeal insofar as it does not relate to the grant agreements that were signed by REA or IMI-JU (CANCER-ID, DIACAT, EU-AIMS, EUC²LID, EUROFORGEN, ONCOTRACK, RADAR-CNS), and declare the action brought by the Appellant before the General Court of the European Union admissible, and refer the case back to the General Court of the European Union for a judgment on the merits;
- in the alternative, set aside the order under appeal insofar as it does not relate to the grant agreements that were signed by REA or IMI-JU, and refer the case back to the General Court of the European Union and
- order the defendant to bear all costs of the proceedings.

Pleas in law and main arguments

1. First ground of appeal: Breach of the right to a fair trial by a breach of duty to inform

With the finding of the inadmissibility of the action without having informed the applicant of its supposed lack of precision of the subject matter beforehand, the General Court has breached the right to a fair trial.

The right enshrined in Article 47 of the Charter has to entail a duty of care for the parties to the proceedings that is concretised here as a duty to explicitly inform the parties of the court's legal opinion before a decision is made and to invite them to comment or, if necessary, to provide further clarification. This must apply especially in a case such as the present one, in which there are apparently also misunderstandings about the extent of the documents available to the appellant (then applicant), and where — according to the opinion of the General Court — the claim was simply not sufficiently substantiated.

2. Second ground of appeal: incorrect application of Article 76 (d) of the Rules of Procedure of the General Court

The General Court's finding that the application did not fulfil the requirements of Article 76 (d) of the Rules of Procedure of the General Court is erroneous in law. The General Court overstretches the requirements for the substantiation of an action pursuant to that article.

In particular, contrary to the General Court's assumption, an adequate defence for the Commission was possible, and it was also possible for the General Court to rule on the action. This is especially so, because the Commission had already accepted the claims made by the applicant.

Furthermore, the application was not vague and unspecific as regards the amounts claimed by the applicant.

In addition, contrary to the General Court's finding, the action did not lack clarity in its entirety; there especially was no 'inconsistency' between the legal basis relied on and the arguments put forward.

Appeal brought on 19 November 2021 by Naturgy Energy Group, S.A, formerly Gas Natural SDG, S. A. against the judgment of the General Court (Seventh Chamber) delivered on 8 September 2021 in Case T- 328/18, Naturgy Energy Group v Commission

(Case C-698/21 P)

(2022/C 73/17)

Language of the case: Spanish

Parties

Appellant: Naturgy Energy Group, S.A., formerly Gas Natural SDG, S.A. (represented by: F. González Díaz and J. Blanco Carol, lawyers)

Other parties to the proceedings: European Commission, EDP España, S.A., Viesgo Producción, S.L., successor in title to Viesgo Generación, S.L.

Form of order sought

The appellant claims that the Court of Justice should:

- set aside the judgment of the General Court of 8 September 2021 in Case T-328/18, *Naturgy Energy Group v Commission*;
- give final judgment in the matter, without referring the case back to the General Court as permitted by Article 61 of the Statute of the Court of Justice, by annulling Decision C(2017) 7733 final of 27 November 2017 concerning State Aid SA.47912 (2017/NN) ⁽¹⁾ — Spain; Environmental incentive in favour of coal-fired power plants;
- order the Commission to pay the costs in both the present proceedings and in the proceedings before the General Court.

Pleas in law and main arguments

In support of its appeal, the appellant relies on the following two grounds of appeal:

1. First ground of appeal, alleging an error of law in the review of the statement of reasons of the decision at issue with respect to the selective nature of the measure at issue.

Naturgy submits that the General Court's examination of the reasoning for the decision at issue with respect to the selectivity of the measure at issue is vitiated by an error of law.