



Reports of Cases

Judgment of the General Court (Fifth Chamber) of 16 July 2014 — *Zweckverband Tierkörperbeseitigung v Commission*

(Case T-309/12)

(State aid — Animal carcass and slaughter waste disposal services — Maintaining epidemic reserve capacity — Decision declaring aid to be incompatible with the internal market — ‘Undertaking’ — Advantage — Service of general economic interest — Compensation relating to a public service obligation — Effect on trade between Member States and distortion of competition — Existing aid or new aid — Need for aid — Subsidiarity — Legitimate expectations — Legal certainty — Proportionality)

1. *Competition — Union rules — Addressees — Undertakings — Concept — Exercise of an economic activity — Services for eliminating animal carcasses and waste from abattoirs and maintaining an epidemic reserve capacity — No exercise of public power prerogatives — Included (Art. 5 TEU; Arts 3(1) TFEU, 14 TFEU, 106(2) TFEU, 107 TFEU, 108 TFEU, 109 TFEU and 168 TFEU; Commission Notice 2001/C 17/04, point 22) (see paras 49-53, 56, 59, 62, 66, 67, 70, 73, 76, 84, 85, 88, 219)*
2. *Competition — Union rules — Undertaking — Concept — Activities connected with the exercise of public power prerogatives — Criteria for assessment — Separate assessment for each activity of a given entity — Exclusion from the scope of the competition rules only of activities falling within the exercise of such power (Arts 106(1) TFEU and 107(1) TFEU) (see paras 53, 56, 59, 64, 70, 71, 88)*
3. *State aid — Commission decision finding aid to be incompatible with the common market — Discretion of the Commission — Complex evaluation of economic matters — Judicial review — Limits (Art. 107 TFEU) (see para. 96)*
4. *State aid — Commission decision — Assessment of legality by reference to the information available at the time of adoption of the decision (Art. 107 TFEU) (see paras 97, 101, 222)*
5. *Competition — Undertakings entrusted with the operation of services of general economic interest — Definition of services of general economic interest — Member States’ discretion — Limits — Review by the Commission only in the event of manifest error — Possibility of assessment on the basis of guidelines previously adopted by the Commission (Arts 14 TFEU, 106(2) TFEU, 107 TFEU, 108 TFEU, 109 TFEU and 168 TFEU; Commission Notice 2001/C 17/04, point 22) (see paras 104-106, 110-112)*

6. *State aid — Concept — Acceptance of responsibility for costs of maintaining an epidemic reserve capacity — Close link with the elimination of animal carcasses and waste from abattoirs — Application of the principle that the polluter pays — Included — Services of general economic interest — Not included (Arts 106(2) TFEU and 107(1) TFEU; European Parliament and Council Regulation No 1069/2009) (see paras 120, 121, 123, 125)*
7. *State aid — Commission decision — Judicial review — Manifest error of assessment — Insufficient to entail annulment of the decision — Requirement of an economic advantage for the aid recipient (Arts 106(2) TFEU and 107(1) TFEU) (see para. 127)*
8. *State aid — Concept — Measures designed to compensate for the cost of public service missions undertaken by an undertaking — Not included — Conditions — Clearly defined public service obligations — Establishment in an objective and transparent manner of the parameters for calculating compensation — Limitation of the compensation to the cost — Determination of the compensation, where undertaking not selected by a public contract procedure, on the basis of an analysis of the costs of an average undertaking in the sector concerned (Arts 106(2) TFEU and 107(1) TFEU) (see paras 129, 130, 132, 139, 145, 148, 156, 159, 166, 186)*
9. *Competition — Undertakings entrusted with the operation of services of general economic interest — Compensation for the costs generated by the public service mission — Member States' discretion — Limits — Review by the Commission — Judicial review — Limits (Arts 106(2) TFEU and 107(1) TFEU) (see paras 169, 170, 175)*
10. *State aid — Adverse effect on competition — Effect on trade between Member States — Scope of the burden of proof on the Commission (Art. 107(1) TFEU) (see paras 197, 198, 203, 204, 206)*
11. *State aid — Prohibition — Exceptions — Discretion of the Commission — EU management guidelines for aid in the form of public service compensations — Self-limitation on the discretion of the Commission — Obligation to comply with the principles of equal treatment and protection of legitimate expectations (Art. 107(3) TFEU; Commission Notice 2012/C 8/03, Sections 2.2 to 2.10) (see para. 212)*
12. *Judicial proceedings — Time-limit for producing evidence — Article 48(1) of the Rules of Procedure of the General Court — Scope (Rules of Procedure of the General Court, Arts 48(1), and 66(2)) (see para. 223)*
13. *State aid — Recovery of unlawful aid — Aid granted in breach of the procedural rules of Article 108 TFEU — Legitimate expectations entertained by the recipients — None save in exceptional circumstances — Invocation by the Member State having granted the aid — Not permissible — Inaction of the Commission for a relatively long period — No effect (Arts 107 TFEU and 108 TFEU) (see paras 230, 231, 233-237)*

14. *EU law — Principles — Protection of legitimate expectations — Scope — National authorities entrusted with applying EU law — Authority acting contrary to EU rules — No legitimate expectations (see para. 238)*
15. *State aid — Respective powers of the Commission and the national courts — Role of the national courts — Commission decision to open a formal investigation procedure in respect of aid — Obligation of the national courts to draw all the consequences of a possible infringement of the obligation to suspend the measures examined — Suspension of operation of the measure in question and recovery of the amounts already paid — Granting of provisional measures — National court asking the Commission for clarifications — Reference for a preliminary ruling to the Court of Justice (Art. 4(3) TEU; Arts 108(2) and (3) TFEU and 267, second and third paras, TFEU) (see paras 239, 240, 247)*
16. *State aid — Recovery of unlawful aid — Principle of res judicata no bar to recovery (Arts 107 TFEU and 108 TFEU) (see para. 246)*
17. *State aid — Existing aid and new aid — Examination by the Commission — Exclusive competence — Jurisdiction of the national courts — Limits (Arts 107 TFEU and 108 TFEU; Council Regulation No 659/1999, Art. 1(b)(i)) (see para. 246)*
18. *State aid — Examination of complaints — Obligations of the Commission — Examination of matters not expressly raised by the complainant of the Commission's own motion (Art. 108(2) TFEU) (see para. 264)*

Re:

ACTION for annulment of Commission Decision 2012/485/EU of 25 April 2012 on State aid SA.25051 (C 19/10) (ex NN 23/10) granted by Germany to the Zweckverband Tierkörperbeseitigung in Rhineland-Palatinate, Saarland, Rheingau-Taunus-Kreis and Landkreis Limburg-Weilburg (OJ 2012 L 236, p. 1).

Operative part

The Court:

1. Dismisses the action;

2. Orders the Zweckverband Tierkörperbeseitigung in Rhineland-Palatinate, Saarland, Rheingau-Taunus-Kreis and Landkreis Limburg-Weilburg to bear its own costs relating to the main proceedings and to pay the costs incurred by the European Commission;
3. Orders Saria Bio-Industries AG & Co. KG, SecAnim GmbH and Knochen- und Fett-Union GmbH (KFU) to bear their own costs relating to the main proceedings;
4. Orders the Zweckverband Tierkörperbeseitigung in Rhineland-Palatinate, Saarland, Rheingau-Taunus-Kreis and Landkreis Limburg-Weilburg to bear the costs relating to the application for interim measures.