

Action brought on 29 April 2010 — Stichting Woonlinie and Others v Commission

(Case T-202/10)

(2010/C 179/86)

Language of the case: Dutch

Parties

Applicants: Stichting Woonlinie (Woudrichem, Netherlands), Stichting Allee Wonen (Roosendaal, Netherlands), Woningstichting Volksbelang (Wijk bij Duurstede, Netherlands), Stichting WoonInvest (Leidschendam-Voorburg, Netherlands), Stichting Woonstede (Ede, Netherlands) (represented by: E. Henny, T. Ottervanger and P. Glazener, lawyers)

Defendant: European Commission

Form of order sought

— Annul the Commission's decision concerning existing aid, in accordance with Article 263 TFEU;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicants seek annulment of Commission Decision C(2009) 9963 final of 15 December 2009 relating to State aid E 2/2005 and N 642/2009 (Netherlands) — Existing and special project aid to housing corporations. The applicants rely on eight pleas in law in support of their application.

First, the Commission erred in its application of the law by deeming all the measures to form part of an aid scheme. According to the applicants, the third and fourth measures referred to by the Commission were erroneously regarded as forming part of an existing aid scheme within the meaning of Article 1(d) of Regulation No 659/1999,⁽¹⁾ irrespective of whether those measures constitute aid within the meaning of Article 107(1) TFEU. Consequently, the Commission exceeded its powers by including both measures in its examination of the compatibility of an existing aid scheme with the common market.

Second, the Commission's decision in case E 2/2005 was based on an incomplete and manifestly incorrect assessment of the national legislation applicable and of the relevant facts. According to the applicants, the Commission did not examine whether there is actually a manifest error in the definition of

service of general economic interest in the current Netherlands system of social housing funding.

Third, the Commission's assessment was erroneous and negligent in so far as it concluded that the letting of social housing to persons with a relatively high income is part of the public service mission of social housing corporations.

Fourth, the Commission erred in law and abused its powers by demanding that the Netherlands State redefine 'social housing provision'. According to the applicants, the Commission exceeds its powers by putting forward its own definition of social housing provision as a service of general economic interest, notwithstanding the fact that the Netherlands must be regarded as having a wide discretion to determine its own policy in that area.

Fifth, the Commission erred in law by failing to distinguish between the definition of a service of general economic interest and the manner in which it is financed.

Sixth, the Commission disregarded Decision 2005/842/EG⁽²⁾ in that it demanded a specific description of the service of general economic interest. According to the applicants, the Commission erroneously decided that a Member State must define the service of general economic interest on the basis of an income threshold.

Seventh, the Commission made an error of assessment and disregarded Article 5 of Decision 2005/842/EC in so far as it did not find that the manner in which the service of general economic interest was financed was manifestly inappropriate. According to the applicants, the Commission failed to ascertain whether, taking into account the definition of the service of general economic interest, there was any possibility of overcompensation.

Eighth, the Commission abused the procedure for the assessment of existing aid schemes by requiring, on the basis of that procedure, an exhaustive list of buildings which are to be categorised as social property, as a result of which buildings that are not included in that list no longer fall within the category of a service of general economic interest.

⁽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).

⁽²⁾ Commission Decision 2005/842/EC of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (notified under document number C(2005) 2673) (OJ 2005 L 312, p. 67).