

Mark or sign cited in opposition: inter alia, a figurative mark registered in Germany which contains the word element 'Raif-eisen', in respect of services in Classes 35, 36, 37, 38, 39, 40, 41 and 42.

Decision of the Opposition Division: Rejection of the opposition.

Decision of the Board of Appeal: Dismissal of the appeal.

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 207/2009, ⁽¹⁾ as there is a likelihood of confusion between the marks at issue.

⁽¹⁾ Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

Action brought on 30 April 2010 — IVBN v Commission

(Case T-201/10)

(2010/C 179/85)

Language of the case: Dutch

Parties

Applicant: Vereniging van Institutionele Beleggers in Vastgoed, Nederland (IVBN) (Voorburg, Netherlands) (represented by: M. Meulenbelt, lawyer)

Defendant: European Commission

Form of order sought

- Declare the action admissible;
- annul the contested decision of the Commission;
- order the Commission to pay the costs.

Pleas in law and main arguments

The applicant seeks 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 applicant relies on three pleas in law in support of its application.

First, the applicant alleges infringement of Articles 18 and 19 of Regulation No 659/1999, ⁽¹⁾ Articles 106(2) TFEU, 107 TFEU and 108 TFEU and the obligation to state reasons. According to the applicant, the Commission's presentation of the facts concerning the obligation on the part of housing corporations to charge rents below the appropriate rental rates set by the State is inaccurate. Furthermore, according to the applicant, the definition of the target group for social housing provision is unsubstantiated and incorrect. The Commission also erred in failing to set an objective limit on the construction costs of housing that is to be funded by aid and on the intrinsic quality of such rental accommodation, as reflected in the amount of rent. Furthermore, the safeguards against overcompensation are inadequate, with the result that the Commission is also in breach of Article 5 of the Decision relating to services of general economic interest. ⁽²⁾ Finally, the applicant submits in that regard that the Commission failed to address the applicant's complaint concerning the role of the Woningeninvesteringfond (Housing Investment Fund) and the Nederlandse Waterschapsbank.

Second, the applicant alleges infringement of Article 1(c) of Regulation No 659/1999, Article 4(1) of Regulation No 794/2004 ⁽³⁾ and the obligation to state reasons. According to the applicant, the Commission failed to carry out a thorough and detailed examination and to establish that all or at least a substantial part of the aid to housing corporations referred to in case E 2/2005 is to be regarded as new aid instead of as existing aid.

Finally, the applicant submits that the Commission infringed Articles 106(2) TFEU, 107 TFEU and 108 TFEU by neglecting to initiate the formal investigation procedure provided for under Article 108(2) TFEU, in conjunction with Articles 4 and 6 of Regulation No 659/1999, as a result of which the applicant's procedural rights under those provisions have also been infringed.

⁽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).

⁽³⁾ Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 2004 L 140, p. 1).