Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

9 March 2017*

(Appeal — State aid — Transfer of mines at a price below real market value — Exemption from taxes on the transfer transaction — Assessment of the amount of the advantage granted)

In Case C-100/16 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 18 February 2016,

Ellinikos Chrysos AE Metalleion kai Viomichanias Chrysou, represented by V. Christianos and I. Soufleros, dikigoroi,

appellant,

the other parties to the proceedings being:

Hellenic Republic,

applicant at first instance,

European Commission, represented by É. Gippini Fournier and A. Bouchagiar, acting as Agents,

defendant at first instance,

THE COURT (Tenth Chamber),

composed of M. Berger, President of the Chamber, A. Borg Barthet and E. Levits (Rapporteur), Judges,

Advocate General: M. Wathelet,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: English.

Judgment

1 By its appeal, Ellinikos Chrysos AE Metalleion kai Viomichanias Chrysou ('Ellinikos Chrysos') asks the Court to set aside the judgment of the General Court of 9 December 2015, *Greece and Ellinikos Chrysos* v *Commission* (T-233/11 and T-262/11, 'the judgment under appeal', EU:T:2015:948), in so far as, by that judgment, the General Court dismissed its action for the annulment of Commission Decision 2011/452/EU of 23 February 2011 on the State aid C 48/08 (ex NN 61/08) implemented by Greece in favour of Ellinikos Chrysos AE (OJ 2011 L 193, p. 27, 'the decision at issue').

Background to the dispute and the decision at issue

2 Until 2003 TVX Hellas AE operated the Cassandra (Greece) gold mines. Under an extrajudicial settlement of 12 December 2003, the Hellenic Republic acquired the ownership of the assets of TVX Hellas for EUR 11 million and, released it, together with TVS Hellas' parent company TVX Gold Inc., from any administrative or criminal liability or any obligation for possible infringements of environmental protection legislation.

3 Article 51 of Law No 3220/2004 ratified that settlement, whereas Article 52 of that law ratified the contract whereby the Hellenic Republic transferred the assets of TVX Hellas to Ellinikos Chrysos for the sum of EUR 11 million. Those assets consist of gold mines, land and gold stocks. In addition, the acquirer undertook, first, to carry out the actions and procedures for environmental protection and maintenance within the time limit provided for granting the necessary authorisations and approvals, and, second, to commence the measures necessary for the start of the operation of the Cassandra mines within a period of three months. Third, the acquirer undertook to complete an investment project on the development of those mines and on the construction and operation of the gold processing plant, within a period of 24 months.

4 In addition, Article 5 of that contract stipulated that the transaction transferring assets to Ellinikos Chrysos was exempt from duties and taxes.

5 After having received a complaint in connection with that transaction, the European Commission sent requests for additional information from the Greek authorities. By decision of 10 December 2008, the Commission opened the formal investigation procedure under Article 108(2) TFEU. In that context, Ellinikos Chrysos submitted observations.

6 By the decision at issue, the Commission considered, in essence, that the transaction transferring TVX Hellas' assets to Ellinikos Chrysos by the Hellenic Republic constituted aid incompatible with the internal market and that that Member State had to recover it. By that decision, the Commission took the view, first, that the Cassandra mines had been sold to Ellinikos Chrysos at a price below market value and, second, that the exemption from registration duties or other taxes relating to the transaction transferring the disputed land constituted an additional element of the aid at issue. The total amount of the aid was set at EUR 15.34 million.

The procedure before the General Court and the judgment under appeal

7 In support of its action for annulment of the decision at issue, Ellinikos Chrysos put forward two pleas in law, the first of which was subdivided into several heads of claim.

8 Under the second head of claim of the first plea in law, which the General Court summarised in paragraph 65 of the judgment under appeal, Ellinikos Chrysos claimed that the Commission had incorrectly used and assessed the expert report on the appraisal of the Cassandra mines carried out in 2004 by an international consulting firm specialised in the mining sector on behalf of European

Goldfields Ltd, as part of its plans to increase its capital in Ellinikos Chrysos ('the expert report'), on which the Commission had relied to assess the value of those mines. The General Court referred to the arguments relating to the context in which that report had been drawn up, the date it was drawn up and the definition of the operational mines referred to in it, all of which, it was argued, rendered it unsuitable for an assessment of the value of those mines. Moreover, the General Court stated, in paragraph 92 of the judgment under appeal, that it was common ground that Ellinikos Chrysos did not dispute the reliability and objectivity of that report.

9 After having rejected the argument concerning the date when the expert report had been drawn up, the General Court found that that report stated that a mine that was operating or was subject to a feasibility study was at the 'near-production' stage, which was the case, still according to that report, of the Stratoni, Olympiada and Skouries mines, which are included in the Cassandra operation.

10 Therefore, in paragraph 99 of the judgment under appeal, the General Court rejected the second head of claim of the first plea of law.

11 In addition, in paragraph 100 of the judgment under appeal, the General Court noted that the expert report used the so-called 'income approach' to assess the value of the mines at issue; the relevance of that approach was not called into question by Ellinikos Chrysos.

12 As regards the value of the Skouries mine, the General Court stated, in paragraph 103 of the judgment under appeal, that, according to the expert report, a feasibility study had been completed, so that that value had been determined using the income approach, taking into account the costs of development, construction and functioning as well as administrative costs for obtaining an operating permit.

13 As regards the value of the land at the mines at issue, the General Court stated, in paragraphs 126 and 127 of the judgment under appeal, that the Commission had considered that they represented assets transferred to Ellinikos Chrysos, whose intrinsic value had been assessed by the expert report on the basis of the information provided by Ellinikos Chrysos. The General Court confirmed that value in paragraph 132 of the judgment under appeal and dismissed the action as a whole.

Forms of order sought by the parties

14 Ellinikos Chrysos requests the Court to:

— set aside the judgment under appeal and refer the case back to the General Court; and

— order the Commission to pay the costs.

15 The Commission contends that the Court should:

— dismiss the appeal; and

— order Ellinikos Chrysos to the pay the costs.

The appeal

Preliminary considerations

16 In support of its appeal, the appellant raises three pleas in law, alleging, respectively, failure to state reasons in the judgment under appeal concerning the assessment of the value of the mines transferred, defective reasoning in that judgment concerning the assessment of the value of the land transferred, and the incorrect valuation of the advantage arising from the tax exemption on the transfer transaction.

17 In essence, the appellant disputes, by its three grounds of appeal, the General Court's assessment of the amount of the advantage which was granted to it as a result of the transfer of the mines and land in Cassandra.

18 In that regard, first, it is settled case-law that the Commission must make complex economic assessments when assessing the value of aid within the meaning of Article 107 TFEU (see, to that effect, judgment of 2 September 2010, *Commission* v *Scott*, C-290/07 P, EU:C:2010:480, paragraph 68).

19 In those circumstances, the review by the EU judicature of such a process is necessarily restricted. It is limited to determining whether the rules governing procedure and the requirement for a statement of reasons have been complied with, whether the facts are accurately stated and whether there has been any manifest error of assessment or any misuse of powers (see, to that effect, judgment of 12 October 2016, *Land Hessen* v *Pollmeier Massivholz*, C-242/15 P, not published, EU:C:2016:765, paragraph 28).

20 In particular, it is not for the EU judicature, in the context of that review, to substitute its own economic assessment for that of the Commission (judgment of 24 October 2013, *Land Burgenland and Others* v *Commission*, C-214/12 P, C-215/12 P and C-223/12 P, EU:C:2013:682, paragraph 78).

21 Second, it should be borne in mind that, in accordance with Article 256 TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union, an appeal lies on points of law only. The General Court thus has exclusive jurisdiction to find and appraise the relevant facts and to assess the evidence. The appraisal of the facts and the assessment of the evidence thus do not, save where the facts and evidence have been distorted, constitute a point of law which is subject, as such, to review by the Court of Justice on appeal (judgment of 26 January 2017, *Masco and Others* v *Commission*, C-614/13 P, EU:C:2017:63, paragraph 35).

22 Consequently, the present appeal can succeed only if Ellinikos Chrysos shows that the General Court erred in law or distorted the facts or evidence in the exercise of its restricted review of the Commission's assessment of the amount of the aid in dispute.

The first ground of appeal

Arguments of the parties

23 By its first ground of appeal, the appellant submits, in the first place, that the General Court wrongly held, in paragraph 103 of the judgment under appeal, that the Stratoni mine was operational at the time of its sale. It states that it is apparent from the decision at issue that the activities were suspended in all of the Cassandra mines. As regards the Skouries mine, the General Court could not confirm that it had a positive value and at the same time find that that mine was merely a deposit without infrastructure or mining permits.

24 In the second place, the General Court failed to respond to the appellant's argument disputing the use of the expert report for the purpose of assessing the value of the mines transferred because of the context in which it had been created. In addition, in paragraphs 96 and 97 of the judgment under appeal, the General Court took account of incorrect information contained in that report with regard to the effective resumption of the activities of the Stratoni and Olympiada mines. The result was an incorrect assessment of the advantage derived by Ellinikos Chrysos from the purchase of the Cassandra mines.

25 In the third place, the General Court did not take into account, in order to confirm the assessment of that advantage, certain costs related to infrastructure which had to be met in order to render the Skouries mine operational.

26 The Commission contends that that ground of appeal is unfounded.

Findings of the Court

27 As regards the first part of the first ground of appeal, it should be pointed out that Ellinikos Chrysos does not dispute the definition of a 'near-production' mine as used by the Commission and noted by the General Court, in paragraph 96 of the judgment under appeal, according to which a mine is in a 'near-production' stage when it is or has been operational or has been the subject of a feasibility study. Since the Stratoni and Olympiada mines had been operational, but their activities had been suspended for non-economic reasons, and the Skouries mine had been the subject of a feasibility study, it cannot be claimed that the General Court erred in law by confirming that the assessment of the advantage granted to Ellinikos Chrysos by the transfer of the mines at issue concerned mines in a 'near-production' stage.

28 In that regard, Ellinikos Chrysos, in criticising the General Court for having confirmed that the Stratoni mine was operational at the time of its transfer, misreads the judgment under appeal. In fact, the General Court confirmed, within the limits of its powers, that the assessment of the value of that mine was based on the fact that it had been operational and that its activities had been suspended for reasons which are not of such a nature as to affect its intrinsic economic value.

29 Similarly, the appellant's argument based on the absence of infrastructure and mining permits as regards the Skouries mine cannot be accepted. Such a state of affairs is not inconsistent with the recognition of a positive value for that mine, having regard, not only, to the definition, adopted by the Commission, of a mine in a 'near-production' stage, but also to the evaluation method used, as described in paragraph 100 of the judgment under appeal, which is not disputed by Ellinikos Chrysos.

30 As regards the second part of the first ground of appeal, the appellant criticises the General Court, first, for not having replied specifically to the argument that the usefulness of the expert report in assessing the value of the mines at issue was called into question because of the purpose of the report.

31 In that regard, it must be pointed out, first, that, in the context of the appeal, the purpose of review by the Court of Justice is, inter alia, to consider whether the General Court addressed, to the requisite legal standard, all the arguments raised by the appellant and, secondly, that the plea alleging that the General Court failed to respond to arguments relied on at first instance amounts essentially to pleading a breach of the obligation to state reasons which derives from Article 36 of the Statute of the Court of Justice, applicable to the General Court by virtue of the first paragraph of Article 53 of that Statute, and from Article 117 of the Rules of Procedure of the General Court (order of 13 December 2012, *Alliance One International* v *Commission*, C-593/11 P, not published, EU:C:2012:804, paragraph 27).

32 In addition, the obligation to state reasons does not require the General Court to provide an account which follows exhaustively and one-by-one all the arguments put forward by the parties to the case, the General Court's reasoning may therefore be implicit on condition that it enables the persons concerned to know why it has not upheld their arguments and provides the Court of Justice with sufficient material for it to exercise its power of review (order of 13 December 2012, *Alliance One International* v *Commission*, C-593/11 P, not published, EU:C:2012:804, paragraph 28).

33 It is apparent from paragraph 65 of the judgment under appeal that Ellinikos Chrysos relied on four arguments for its head of claim that the expert report was an unsuitable basis for the assessment of the value of the Cassandra mines. Although the General Court replied to the arguments relating to the date that the expert report had been drawn up, in paragraphs 93 to 95 of the judgment under appeal, to the definition of the concept of a mine which is operational, in paragraphs 96 to 98 of that judgment, and to the evaluation method, in paragraphs 100 to 104 of that judgment, the General Court did not respond to the argument based on the purpose for which that report had been drawn up, which could have led to the unsuitable nature of that report for the assessment at issue.

34 In those circumstances, the General Court infringed its obligation to state reasons by holding, in paragraph 99 of the judgment under appeal, that Ellinikos Chrysos' arguments that the Commission's use of the expert report had to be rejected, without responding to the argument based on the purpose for which that report had been drawn up.

35 Secondly, even if, by criticising the General Court for having used elements of the expert report relating to future events, the appellant does not ask the Court of Justice to make a fresh assessment of the facts of the case, the appellant does not in any way indicate to what extent such a circumstance would disqualify the Commission's assessment of the advantage which was granted to it. Since those events in fact occurred, one of them indeed at a date before that set out in the expert report, it is not clear why such a circumstance would be such as to impair the usefulness of that report for the purpose of assessing the advantage granted.

36 As regards the third part of the first ground of appeal, the General Court stated, in paragraph 103 of the judgment under appeal, that the expert report had taken account of the various costs necessary for the Skouries mine to commence production. Therefore, that third part, by which the appellant submits that the assessment of the value of the Skouries mine did not reflect such costs, results from a misreading of the judgment under appeal.

37 In any event, as regards the actual amount of those costs, it is apparent from paragraph 21 of the present judgment that Ellinikos Chrysos may not, at the appeal stage, request the Court to make a fresh assessment of the facts, in general, and of the actual value of the mines at issue, in particular.

38 Consequently, the second part of the first ground of appeal must be upheld, in so far as the appellant complains that the General Court did not respond to the argument based on the purpose for which the expert report had been drawn up. That ground of appeal must be rejected as to the remainder.

The second ground of appeal

Arguments of the parties

39 By its second ground of appeal, the appellant complains, in the first place, that the General Court relied on an insufficient and contradictory statement of reasons in order to reject, in paragraph 132 of the judgment under appeal, its arguments relating to the assessment of the value of land of the Cassandra mines. If the General Court had found that the mines to which that land was attached were not in operation at the time of the transfer of the assets, its assessment of the value of that land would have been less than that which results from the judgment under appeal.

40 In the second place, the General Court confirmed the evaluation method for the value of the land based on the price paid by TVX Hellas in 1995. At that time, however, the mines were in operation and the value of the land was necessarily higher than in 2003.

41 Primarily, the Commission maintains that the second ground of appeal, as a whole, is inadmissible. In the alternative, it contends that the appellant's arguments are manifestly unfounded.

Findings of the Court

42 As regards the first part of the second ground of appeal, the General Court confirmed, in paragraph 126 of the judgment under appeal, the Commission's approach which took account of the intrinsic value of the land attached to the Cassandra mines. That said, the appellant does not indicate to what extent such an approach is vitiated by a manifest error of assessment on the ground that account was not taken of the fact that the mines at issue were not in operation and that that land could not have another intended use than that found. In fact, assuming that such a fact is capable of influencing the intrinsic value of the land at issue, the General Court pointed out, in paragraph 126, that the location and the specific nature of that land had been taken into account in the Commission's assessment. Accordingly, the General Court cannot be reproached for having infringed its obligation to state reasons in any way.

43 As regards the second part of the second ground of appeal, the General Court found, in paragraph 127 of the judgment under appeal, and the appellant has not stated otherwise, that the value of the land used by the Commission after verification corresponded to that notified by Ellinikos Chrysos.

44 Moreover, and as was stated in paragraph 42 of the present judgment, the Commission concerned itself with determining the intrinsic value of the land at issue. Therefore, and in so far as the Commission took into account, in the estimation of the value of all of the assets transferred, all of the costs required to operate the Cassandra mines and the specific nature of that land, the fact that the mines at issue were not in operation at the time of their transfer cannot, in itself, influence the intrinsic value of the land at issue.

45 In any event, by disputing the assessment of the value of the land attached to the mines in dispute, such as follows from the judgment under appeal, Ellinikos Chrysos is in fact asking the Court to make a fresh assessment of the facts of the case, which it cannot require at the appeal stage, as has been pointed out in paragraph 21 of the present judgment. It should be borne in mind that the appeal is limited to points of law and that the General Court alone has jurisdiction to assess the relevant facts and to assess the evidence.

46 Since Ellinikos Chrysos does not claim any distortion of those facts and evidence, its arguments in support of its second ground of appeal cannot succeed.

47 Consequently, that ground of appeal must be rejected.

The third ground of appeal

Arguments of the parties

48 By its third ground of appeal, the appellant claims that, since the value of the land at issue was not properly estimated by the Commission, the amount of the advantage accruing from the tax exemption which it has been granted is necessarily incorrect, the amount of those taxes being directly related to the value of that land.

49 The Commission proposes that that ground of appeal be dismissed as being unfounded.

Findings of the Court

50 The third ground of appeal is based on the premiss that the General Court erred in law as regards the appraisal of the Commission's assessment of the value of the land relating to the Cassandra mining operations. As is apparent from paragraph 46 of the present judgment, Ellinikos Chrysos has not succeeded in demonstrating that that was the case. The third ground of appeal must therefore be rejected.

51 It follows from all of those considerations that the judgment under appeal must be set aside inasmuch as, by that judgment, the General Court failed to respond to Ellinikos Chrysos' argument based on the purpose for which the expert's report was drawn up. For the remainder, the appeal is dismissed.

The action before the General Court

52 In accordance with the second sentence of the first paragraph of Article 61 of the Statute of the Court of Justice, if the decision of the General Court is set aside the Court of Justice may give final judgment in the matter where the state of the proceedings so permits.

53 Since that is the case here, it is necessary to examine the argument in the second head of claim of the first plea in law of the action at first instance brought by Ellinikos Chrysos, which is based on the purpose for which the expert report was drawn up.

54 In that regard, the appellant claims that the purpose for which the expert report was drawn up rendered it unsuitable for use in assessing the value of the Cassandra mines. Thus, since that report had been commissioned in order to advise the Board of Directors of European Goldfields on the potential acquisition of additional shares in the capital of Ellinikos Chrysos, it covered the value of that company over the long term.

55 However, and in so far as the appellant does not call into question either the reliability or the objectivity of the expert report, a mere reference to the context in which it was drawn up cannot have the effect of depriving it of any credibility for the evaluation of the Cassandra mines.

56 Indeed, and in the absence of anything to suggest the contrary put forward by Ellinikos Chrysos, it does not appear that the purpose for which an expert report is created has any bearing on the value of the estimated assets, unless to challenge the reliability and objectivity of that expert report.

57 In so far as that is not the case here, that argument and the action for annulment brought by Ellinikos Chrysos before the General Court must be dismissed as a whole.

Costs

58 Under Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is unfounded or where the appeal is well founded and the Court itself gives final judgment in the case, the Court is to make a decision as to costs. Under Article 138(1) of those Rules, applicable to appeal proceedings by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

59 Since the Commission has applied for costs to be awarded against Ellinikos Chrysos and the latter has been unsuccessful, it must be ordered to bear its own costs and to pay those incurred by the Commission.

On those grounds, the Court (Tenth Chamber) hereby

1. **Sets aside the judgment of the General Court of the European Union in** *Greece and Ellinikos Chrysos* **v** *Commission* **(T-233/11 and T-262/11, EU:T:2015:948) in so far as, by that judgment, the General Court failed to respond to Ellinikos Chrysos AE Metalleion kai Viomichanias Chrysou's argument based on the purpose for which the expert report on the appraisal of the mines in Cassandra (Greece) had been drawn up during 2004;**

2. **Dismisses the appeal as to the remainder;**

3. **Dismissess Ellinikos Chrysos AE Metalleion kai Viomichanias Chrysou's action for annulment of Commission Decision 2011/452/EU of 23 February 2011 on the State aid C 48/08 (ex NN 61/08) implemented by Greece in favour of Ellinikos Chrysos AE;**

4. **Orders Ellinikos Chrysos AE Metalleion kai Viomichanias Chrysou to pay the costs.**

Berger Borg Barthet Levits

Delivered in open court in Luxembourg on 9 March 2017.

A. Calot Escobar
Registrar

M. Berger
President of the Tenth Chamber