

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

- set aside in its entirety the judgment of the General Court of 8 March 2023, in Case T-235/21, *Republic of Bulgaria v European Commission* (EU:T:2023:105) and give final judgment or, in the alternative, refer the case back before the General Court for a ruling on the dispute, and
- order the Commission to pay the costs of the present proceedings.

Grounds of appeal and main arguments

In support of the action, the appellant relies on two grounds of appeal.

1. The General Court erred in law in its interpretation of Article 52(3) of Regulation No 1306/2013 ⁽¹⁾ and Article 34 of Regulation No 908/2014, ⁽²⁾ in conjunction with Articles 52(1) and 54(5) of Regulation No 1306/2013, and of the obligation to state reasons laid down in Article 296 TFEU, and of the principles of good administration and sincere cooperation and thus reached the incorrect conclusion that the rights of the defence of the Republic of Bulgaria and the procedural guarantees arising from the conformity clearance procedure, the obligation to state reasons for measures, as well as the principles of good administration and sincere cooperation were respected. The reasoning in the judgment is insufficient and inappropriate since the General Court did not assess all the relevant facts and arguments put forward by the Republic of Bulgaria.
2. The General Court erred in law in its interpretation of Article 54(5)(a) and (c), in conjunction with Article 54(1) of Regulation No 1306/2013, considering that, in the present case, the time limit of 18 months laid down in Article 54(1) of Regulation No 1306/2013 had started running ‘when the paying agency received’ OLAF’s final reports. The General Court’s findings in paragraphs 76 to 78 of the judgment in Case T-235/21 are contrary to the settled case-law to the effect that decisions under Article 52 of Regulation No 1306/2013 are to be taken at the conclusion of a specific procedure giving effect to the *audi alteram partem* rule and the various documents exchanged during the administrative procedure are preparatory documents for the adoption of a decision.

⁽¹⁾ Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ L 347, 2013, p. 549).

⁽²⁾ Commission Implementing Regulation (EU) No 908/2014 of 6 August 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, rules on checks, securities and transparency (OJ L 255, 2014, p. 59).

Appeal brought on 11 May 2023 by Harley-Davidson Europe Ltd and Neovia Logistics Services International against the judgment of the General Court (Eighth Chamber, Extended Composition) delivered on 1 March 2023 in Case T-324/21, Harley-Davidson Europe and Neovia Logistics Services International v Commission

(Case C-297/23 P)

(2023/C 235/28)

Language of the case: English

Parties

Appellants: Harley-Davidson Europe Ltd and Neovia Logistics Services International (represented by: E. Righini, avvocato and S. Völcker, Rechtsanwalt)

Other party to the proceedings: European Commission

Form of order sought

The appellants claim that the Court should:

- set aside the judgment under appeal;
- annul the contested decision; and

— order the Commission to pay the appellants' costs before this Court and before the General Court.

Pleas in law and main arguments

1. First plea in law, alleging errors of law regarding the General Court's interpretation of Article 33 of the Commission Delegated Regulation (EU) 2015/2446 ⁽¹⁾ ('UCC-DA'). The General Court failed to assess the purpose and context of Article 33 UCC-DA, it unfairly disregarded the right of traders to respond to commercial policy measures of the European Union by relocating their production operations, and incorrectly interpreted the standard of proof necessary to shift the burden of proof to the appellants.
2. Second plea in law, alleging errors of law regarding the General Court's conclusion that Article 33 UCC-DA does not exceed the limits of the delegation conferred on the Commission by Article 62 of Regulation (EU) No 952/2013 ⁽²⁾ laying down the Union Customs Code.
3. Third plea in law, alleging a violation of the appellants' right to good administration. The General Court wrongly upheld the Contested Decision despite finding a breach of the appellants' right to be heard, and erred in concluding that the length of the Commission's procedure, including the period to initiate formal proceedings, was not excessive in breach of the reasonable time principle and the appellants' legitimate expectations.

⁽¹⁾ Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code (OJ 2015, L 343, p. 1).

⁽²⁾ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ 2013, L 269, p. 1).
