

- The defendant pays to the applicant, the applicant's costs of and occasioned by this appeal.

Pleas in law and main arguments

1. Infringement of Article 36 and 53 of the Statute of the Court of Justice of the European Union (the 'Statute')

Articles 36 and 53 of the Statute state that the General Court has a duty to set out the reasons on which its judgments are based. In the Judgment under Appeal the General Court erred in law by failing to provide reasons for its conclusion that the relevant public consisted solely of professionals.

2. Infringement of Article 8(1)(b) of Council Regulation 207/2009/EC ⁽¹⁾: Distortion of the Facts: Relevant Public

2.1. The General Court erred in law in concluding that the relevant public consisted solely of professionals and was the same relevant public for the relevant services of the Intervener's CTM and the CTM Application, as this conclusion is based on a distortion of the facts before the General Court. The General Court and the Board should have limited their analysis to the specification of the CTM Application; or in the alternative

2.2. If the General Court was correct to conclude that the relevant public for both the CTM Application and the Intervener's CTM was composed solely of professionals, the General Court ought to have considered that there was no likelihood of confusion between the CTM Application and Intervener's CTM, as a result of the higher degree of attention paid by the relevant professionals.

3. Infringement of Article 8(1)(b) of Council Regulation 207/2009/EC: Distortion of the Facts: Similarity of Services and Infringement of Article 75 of Council Regulation 207/2009/EC

The General Court erred in law in concluding that the services covered by the CTM Application are similar to the services protected by the Intervener's CTM, bearing in mind *inter alia* their respective nature, intended purpose, end users and relevant public. Furthermore, the General Court and the Board erred in law in relying on facts on their own initiative.

⁽¹⁾ Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark
OJ L 78, 24.3.2009, p. 1

Action brought on 18 December 2013 — European Commission v Hellenic Republic

(Case C-677/13)

(2014/C 52/55)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: M. Patakia and E. Sanfrutos Cano)

Defendant: Hellenic Republic

Form of order sought

The applicant claims that the Court should:

- declare that the Hellenic Republic,
 - by not taking the necessary measures to ensure that (a) waste management at the Kiato landfill site is carried out without endangering human health and without harming the environment and (b) the abandonment, dumping or uncontrolled management of waste at said landfill site is prohibited,
 - by tolerating the operation of the said landfill site without agreed environmental conditions and a valid permit which comply with the prerequisites for the issue of such a permit and its content, and consequently not ensuring that only waste that has been subject to treatment is landfilled, the holder of the waste or the operator of the said landfill site not being able to show before or at the time of delivery that the waste in question can be accepted at that landfill site according to the conditions set out in the permit, and that it fulfils the acceptance criteria set out in Annex II,
 - by not ensuring that monitoring and control procedures during the operational phase meet the minimum legal requirements,

has failed to fulfil its obligations under Articles 13, 23 and 36(1) of Directive 2008/98/EC ⁽¹⁾ on waste and Article 6 (subparagraph (a)), Article 8, Article 9 (subparagraphs (a) (b) and (c)), Article 11(1) (subparagraph (a)) and Article 12 of Directive 99/31/EC ⁽²⁾ on the landfill of waste;

- order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

1. The Greek authorities continue to tolerate the Kiato landfill site without agreed environmental conditions and without the appropriate permit (infringement of Article 23 of Directive 2008/98/EC and Articles 8 (particularly subparagraph (a)) and 9 (subparagraphs (a), (b) and (c)) of Directive 99/31/EC. Because of the absence of that permit, the Hellenic Republic is consequently not in a position to meet the obligations which stem from Article 6, subparagraph (a), and Article 11(1), (subparagraph (a)) of Directive 99/31/EC.

The inspections which were carried out on 24 October 2007, 3 November 2011 and 31 July 2012 revealed some substantial problems of malfunctioning at the Kiato landfill site and the overfilling of the site. There is a clear infringement of Articles 13 and 36(1) of Directive 2008/98/EC and Articles 8, 9, and 12 of Directive 99/31/EC.

⁽¹⁾ OJ 2008 L 312, p. 3.

⁽²⁾ OJ 1999 L 182, p. 1.

Action brought on 19 December 2013 — European Parliament v Council of the European Union

(Case C-679/13)

(2014/C 52/56)

Language of the case: French

Parties

Applicant: European Parliament (represented by: F. Drexler, A. Caiola and M. Pencheva, Agents)

Defendant: Council of the European Union

Form of order sought

- annul Council Implementing Decision 2013/496/EU of 7 October 2013 on subjecting 5-(2-aminopropyl)indole to control measures; ⁽¹⁾
- maintain the effects of Council Decision 2013/496/EU, until such time that it is replaced by a new act adopted in the prescribed manner;
- order the defendant to pay the costs.

Pleas in law and main arguments

First, the Parliament notes that the preamble to the contested decision refers to the following legal bases: Article 8(3) of Council Decision 2005/387/JHA of 10 May 2005 on the information exchange, risk-assessment and control of new psychoactive substances ⁽²⁾ and the Treaty on the Functioning of the European Union. The Parliament concludes that the Council refers implicitly to Article 34(2)(c) of the former Treaty of the European Union.

The Parliament puts forward two pleas in support of its action for annulment.

First, the Parliament claims that the Council bases its decision on a legal basis [Article 34(2)(c) UE] which has been repealed since the entry into force of the Lisbon Treaty. Therefore, the contested decision can no longer be based solely on Decision 2005/387/JHA. The latter is a secondary legal basis and is therefore illegal.

Secondly, and in view of the above, the Parliament considers that the decision-making process suffers from infringements of essential procedural requirements. On the one hand, if Article 34(2)(c) EU had been applicable, the Parliament should have

been consulted before the adoption of the contested decision in accordance with Article 39(1) EU. However, the Parliament contends that that was not the case. On the other hand, given that the provisions to be applied are those resulting from the Lisbon Treaty, the Parliament contends it should have been involved in the legislative procedure in any event. The Parliament argues, indeed, that if subjecting the 5-(2-aminopropyl)indole to control measures is an essential element of Decision 2005/387/JHA, the legislative procedure would be that described in Article 83(1) TFEU, namely the ordinary legislative procedure. Alternatively, if Decision 2013/496/EU is considered to be a uniform requirement for the implementation of Decision 2005/387/JHA or as a measure supplementing or modifying a non-essential element of that decision, the procedure to follow would be that provided for in Articles 290 and 291 TFEU for the adoption of implementing acts or delegated acts. In any event, as the Parliament was not involved in the adoption of the contested decision, it suffers from an infringement of an essential procedural requirement.

Finally, in the event that the Court decides to annul the contested decision, the Parliament considers it appropriate, in accordance with Article 264, second paragraph, TFEU, to maintain the effects of the contested decision, until such time that it is replaced by a new act adopted in the prescribed manner.

⁽¹⁾ OJ 2013 L 272, p. 44.

⁽²⁾ OJ 2005 L 127, p. 32.

Request for a preliminary ruling from the Tribunal do Trabalho da Covilhã (Portugal) lodged on 23 December 2013 — Pharmacontinente Saúde e Higiene SA and Others v Autoridade para as Condições do Trabalho (ACT)

(Case C-683/13)

(2014/C 52/57)

Language of the case: Portuguese

Referring court

Tribunal do Trabalho da Covilhã

Parties to the main proceedings

Applicants: Pharmacontinente Saúde e Higiene SA, Domingos Sequeira de Almeida, Luis Mesquita Soares Moutinho, Rui Teixeira Soares de Almeida, André de Carvalho e Sousa

Defendant: Autoridade para as Condições do Trabalho (ACT)

Questions referred

- (a) Is Article 2 of Directive 95/46/EC ⁽¹⁾ to be interpreted as meaning that the concept of 'personal data' covers the record of working time, that is to say, the indication, in relation to each worker, of the times at which working hours begin and end, together with the related breaks and intervals?