Action brought on 19 May 2021 — Arctic Paper Grycksbo v Commission

(Case T-269/21)

(2021/C 297/56)

Language of the case: Swedish

Parties

Applicant: Arctic Paper Grycksbo AB (Grycksbo, Sweden) (represented by: A. Bryngelsson and A. Johansson, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims the General Court should:

— Annul Article 1(1) of and Annex I to Commission Decision (EU) 2021/355 of 25 February 2021 concerning national implementation measures for the transitional free allocation of greenhouse gas emission allowances in accordance with Article 11(3) of Directive 2003/87/EC of the European Parliament and of the Council, in so far as they refer to the installation with identifier SE000000000000468, and

— Order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on six pleas in law.

1. First plea in law, alleging a manifest error of assessment

   — The applicant claims that the Commission made a manifest error of assessment of the facts in its conclusion that Arctic Paper's installation was 'using exclusively biomass'. Arctic Paper had fossil emissions during the period deemed relevant by the Commission. The Commission also accepted the inclusion of a number of installations whose annual emissions were at comparable levels.

2. Second plea in law, alleging infringement of the principle of equal treatment

   — The applicant claims that the contested decision infringes the principle of equal treatment. First, installations in a situation similar to the applicant's installation had similar levels of emissions, but were not excluded. Second, the exclusion of the applicant leads to a distortion of competition, inter alia because less environmentally friendly competitors of the applicant gain a financial advantage over the applicant. There are no objective reasons for a difference in treatment.

3. Third plea in law, alleging infringement of essential procedural requirements

   — The applicant claims that the contested decision infringes essential procedural requirements. First, the Commission breached its duty of care by disregarding the material and reliable data it had received from the Naturvårdsverket (Swedish Environmental Protection Agency) which, had it been taken into account, ought to have led to a different outcome of the decision. Second, the Commission failed to have regard to the applicant's right to be heard. The contested decision is an individual measure adversely affecting the applicant. If, after becoming aware that companies in general and the applicant specifically rounded their emissions data, the Commission had heard the applicant, the applicant could have explained that the data it had submitted contained such roundings. Third, the obligation to state reasons has been breached. It is impossible to infer from the decision the reasons why the applicant was excluded, and the decision is entirely lacking in reasoning concerning inter alia equal treatment.

4. Fourth plea in law, alleging infringement of the principle of legitimate expectations

   — The applicant claims that the EU's legislation on emissions trading and the Commission's previous approval decisions encouraged it to reduce its fossil emissions in favour of burning biomass. The applicant could not foresee that the installation would no longer be covered by the emissions trading system (ETS) and would therefore lose its permission to use fossil fuels and miss out on the financially valuable free allocation of emission allowances because the installation had reduced its use of fossil fuels. There is no overriding public interest justifying infringement of the principle.

5. Fifth plea in law, alleging infringement of Directive 2003/87/EC

— The applicant claims that Directive 2003/87/EC has been infringed by the Commission's misinterpretation of the so-called biomass exception (point 1 of Annex I). First, in the Commission's assessment as to whether the applicant was using biomass exclusively, it used data dating back several years instead of newer or prospective data. Second, the Commission's interpretation of the biomass exception manifestly runs counter to both the other provisions of the directive, in particular Article 10a, and the aim of the directive and the principles of equal treatment and proportionality. The aim of the directive in general and of the rules on the free allocation of emission allowances in particular is to create a financial incentive to reduce the use of fossil fuels, including through the increased use of biomass. The Commission's interpretation of the biomass exception has precisely the opposite effect.

6. Sixth plea in law, alleging inapplicability under Article 277 TFEU of the biomass exception in so far as it relates to the applicant

— In the event that the Court does not consider that the biomass exception can be interpreted as set out in the fifth plea in law, the applicant claims that point 1 of Annex I to Directive 2003/87/EC (the biomass exception), in accordance with Article 277 TFEU, should not be applied in the present case. This is because that provision — were the Commission's interpretation of it to be accepted — runs counter to primary law, including the principles of equal treatment and proportionality. That provision disadvantages those who have gone the furthest in the transition to fossil-free emissions in favour of the others. It therefore incentivises those who have done the most to start using fossil fuels again, and encourages those who still use fossil fuels not to reduce their emissions beyond a certain level.

Action brought on 27 May 2021 — CNH Industrial v EUIPO (SOILXPLORER)

(Case T-300/21)

(2021/C 297/57)

Language of the case: English

Parties

Applicant: CNH Industrial NV (Amsterdam, Netherlands) (represented by: L. Axel Karnøe Søndergaard, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for European Union word mark SOILXPLORER — Application for registration No 18 217 454

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 26 March 2021 in Case R 386/2021-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision in its entirety and allow the trade mark to be published for opposition purposes in respect of all the goods applied for, or, in the alternative, refer the case back to the EUIPO in order that it may adopt the consequent measures;

— order EUIPO to pay the costs incurred by the applicant.

Pleas in law

— Infringement of Article 7(1)(c) of Regulation (EU) 2017/1001 of the European Parliament and of the Council by attributing an incorrect meaning to the trade mark applied for and by failing to consider the mark as filed;