

Form of order sought

- Annul paragraph 2 of table I.B. of Annex I to Council Decision 2012/35/CFSP of 23 January 2012 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ L 19, p. 22), insofar as it relates to the applicant;
- Annul paragraph 2 of table I.B. of Annex I to Council Implementing Regulation (EU) No 54/2012 of 23 January 2012 implementing Regulation (EU) No 961/2010 on restrictive measures against Iran (OJ L 19, p. 1), insofar as it relates to the applicant;
- Annul paragraph 105 of table B of Annex IX to Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010 (OJ L 88, p. 1), insofar as it relates to the applicant;
- Declare Article 20(1) of Council Decision 2010/413/CFSP inapplicable to the applicant;
- Declare Article 23(2) of Council Regulation (EU) No 267/2012 inapplicable to the applicant;
- Declare that the annulment of paragraph 2 of table I.B. of Annex I to Council Decision 2012/35/CFSP and Council Implementing Regulation (EU) No 54/2012 and paragraph 105 of table B of Annex IX to Council Regulation (EU) No 267/2012 has immediate effects; and
- Order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging

- that the substantive criteria for designation under the contested measures are not met in the applicant's case and there is no legal or factual basis for its designation; and/or that the Council committed a manifest error of assessment in determining whether or not the criteria had been met; and
- that the Council designated the applicant on the basis of insufficient evidence to establish that the criteria had been met and thereby committed a (further) manifest error of assessment, since the applicant does not satisfy any of the five criteria for designation provided for in Article 23(2) of Regulation No 267/2012; and that the Council has provided no evidence as to the contrary.

2. Second plea in law, alleging

- that the designation of the applicant is in violation of its fundamental rights and freedoms, including its right to trade and carry out its business activities and to peaceful enjoyment of its possessions and/or is in violation of the principle of proportionality.

3. Third plea in law, alleging

- that the Council has in any event breached the procedural requirements: (a) to notify the applicant individually of its designation, (b) to give adequate and sufficient reasons and (c) to respect the rights of defence and the right to effective judicial remedies.

Action brought on 20 April 2012 — Spraylat v ECHA**(Case T-177/12)**

(2012/C 174/44)

*Language of the case: German***Parties**

Applicant: Spraylat GmbH (Aachen, Germany) (represented by: K. Fischer, lawyer)

Defendant: European Chemicals Agency (ECHA)

Form of order sought

The applicant claims that the Court should:

- annul the administrative charge made known to it by the defendant on 21 February 2012 (invoice No 10030371);
- order the defendant to pay the costs of the proceedings.

As a precautionary claim, the applicant seeks the annulment of Decision SME(2012)1445 of 15 February 2012.

Pleas in law and main arguments

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

1. First plea in law: infringement of Regulation (EC) No 1907/2006 ⁽¹⁾ and of Regulation (EC) No 340/2008 ⁽²⁾

The applicant submits that, as evidenced by both of the regulations, the sole permissible ground for the levying of an administrative charge under Article 13(4) of Regulation No 340/2008 is to cover the costs incurred by the ECHA in verifying a registration in relationship to the size of an undertaking, and that this was not taken into account when determining the administrative charge in accordance with the decision of the ECHA administrative council (MB/29/2010). It further submits that it is not permissible to determine the administrative charge payable on the basis of the size of an undertaking, since this leads to a situation whereby larger undertakings bear the brunt of the costs involved in the evaluation of smaller undertakings.

2. Second plea in law: infringement of the principle of proportionality

Pursuant to this principle, the levying of an administrative charge by the defendant has to be proportionate to the work involved for the defendant. According to the applicant, a comparison of the fee (EUR 20 700) with the administrative work involved for the defendant, shows that this is not the case.

3. Third plea in law: infringement of the general principle of equality

In this regard, the applicant submits that the varying administrative charges levied in accordance with the size of an undertaking also constitutes unequal treatment, which is unlawful. Moreover, with the adjustment of its administrative practice, the defendant infringed the principle of equal treatment, in that it treated the applicant differently from other registered undertakings which the defendant permitted, after receiving a registration number, to make adjustments to the size of the undertaking registered so as to avoid the imposition of an administrative charge.

4. Fourth plea in law: infringement of the principle of legal certainty and the right to good administration

Although the defendant realised that, in practice, it is difficult to communicate the correct size of an undertaking for the purposes of registration, it did not provide the applicant with the opportunity — contrary to the right to good administration — to adjust its figures to avoid payment of the administrative charge.

5. Fifth plea in law: unlawful delegation of legislative competencies to the defendant

Article 13(4) of Regulation No 340/2008 empowers the defendant to levy an administrative charge, without specifying the details of how a charge is to be levied or, in particular, any details regarding the charge itself. In the applicant's view, this constitutes an unlawful delegation of legislative competencies to the defendant.

(¹) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1).

(²) Commission Regulation (EC) No 340/2008 of 16 April 2008 on the fees and charges payable to the European Chemicals Agency pursuant to Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) (OJ 2008 L 107, p. 6).

Action brought on 17 April 2012 — Khwanda v Council

(Case T-178/12)

(2012/C 174/45)

Language of the case: English

Parties

Applicant: Mahran Khwanda (Damascus, Syria) (represented by: S. Jeffrey and S. Ashley, Solicitors, D. Wyatt, QC and R. Blakeley, Barrister)

Defendant: Council of the European Union

Form of order sought

— Annul paragraph 22 of the Annex to Council Implementing Decision 2012/37/CFSP of 23 January 2012 implementing Decision 2011/782/CFSP concerning restrictive measures against Syria (OJ L 19, p. 33), in so far as it relates to the applicant;

— Annul paragraph 22 of the Annex to Council Implementing Regulation (EU) No 55/2012 of 23 January 2012 implementing Article 33(1) of Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ L 19, p. 6), in so far as it relates to the applicant;

— Declare Articles 18(1) and 19(1) of Council Decision 2011/782/CFSP (¹) inapplicable to the applicant;

— Declare Articles 14(1) and 15(1) of Council Regulation (EU) No 36/2012 (²) inapplicable to the applicant;

— Declare that the annulment of paragraph 22 of the Annex to Council Decision 2012/37/CFSP and paragraph 22 of the Annex to Council Regulation (EU) No 55/2012 has immediate effect; and

— Order the Council to pay the cost of the present proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging

— that the substantive criteria for designation under the contested measures are not met in the applicant's case since there is no legal or factual basis for his designation and that the Council committed a manifest error of assessment in this respect; furthermore that the Council designated the applicant on the basis of insufficient evidence;