

— that the protection of court proceedings and legal advice under the third indent of Article 4(2) of Regulation No 1049/2001⁽¹⁾ would not be undermined because that exception concerns the protection of court proceedings of the European Union and its Member States and not proceedings before the International Criminal Tribunal for the former Yugoslavia which are outside the EU's jurisdiction;

— that the protection of the public interest as regards international relations under the third indent of Article 4(1)(a) of Regulation No 1049/2001 would not be undermined;

— that there is an overriding public interest under the third indent of Article 4(2) of Regulation No 1049/2001 because the applicant seeks the disclosure of the documents sought so as to establish its rights in Case T-465/09. That request appertains to access to justice and the right to due process before the European Courts. In addition, the conflict to which those documents relate was concluded in 1995.

⁽¹⁾ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

Action brought on 15 February 2010 — Zuckerfabrik Jülich AG v European Commission

(Case T-66/10)

(2010/C 113/82)

Language of the case: German

Parties

Applicant: Zuckerfabrik Jülich AG (Jülich, Germany) (represented by: H.-J. Prieß and B. Sachs, lawyers)

Defendant: European Commission

Form of order sought

— Annul Commission Regulation (EC) No 1193/2009 of 3 November 2009 correcting Regulations (EC) No

1762/2003, (EC) No 1775/2004, (EC) No 1686/2005, (EC) No 164/2007 and fixing the production levies in the sugar sector for marketing years 2002/2003, 2003/2004, 2004/2005, 2005/2006;

— Order the defendant to pay the costs.

Pleas in law and main arguments

The applicant puts forward six pleas in law in support of its action.

First, the applicant pleads an infringement of Article 233 EC (Article 266 TFEU) by analogy, because the Commission has not given effect to the requirements of the judgment of the Court of Justice in Joined Cases C-5/06 and C-23/06 to C-36/06 *Zuckerfabrik Jülich and Others* [2008] ECR I-3231. In that judgment the Court explained how the parameters of the “exportable surplus” and the “total tonnage of export obligations to be fulfilled” are to be determined in the calculation of the production levies for the marketing years 2002/2003 to 2005/2006. The applicant submits that in the contested regulation the Commission also altered the third parameter, “total amount of refunds”, even though this was not the subject matter of Joined Cases C-5/06 etc.

Second, the Commission infringed Article 15(1)(d) of Regulation (EC) No 1260/2001⁽¹⁾ and the spirit and purpose of that regulation. It submits, inter alia, that when calculating the total amount of refunds the Commission included refunds for exports which had not been claimed and paid. Moreover, the flat-rate approach of monthly exports leads to inaccuracies in the calculation. In Joined Cases C-5/06 etc the Court prohibited the total loss from being set at an amount higher than expenditure for the refunds.

Third, the Commission infringed the principle prohibiting retroactive effects, as the contested regulation altered the total amount of refunds retroactively.

Fourth, when the Commission adopted a production levy regulation for the 2002/2003 to 2005/2006 marketing years on 3 November 2009, it no longer had power to do so, because Regulation No 1260/2001, which the Commission indicated as the legal basis, was no longer in force when the Regulation was adopted, there was no other legal basis under secondary law and, according to the relevant rules of the EC Treaty, it was the Council and not the Commission which had such power.

Fifth, there was an infringement of Article 37(2) EC, because on the basis of that provision a different procedure should have been chosen for the adoption of the Regulation.

Finally, the Commission infringed its obligation to state reasons under Article 253 EC (Article 296, second paragraph, TFEU), as the reason given by the Commission for the contested regulation is that it implements the judgment in Joined Cases C-5/06 etc, but, in the applicant's view, that decision goes beyond the requirements of that judgment.

(¹) Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector (OJ 2001 L 178, p. 1).

Action brought on 15 February 2010 — Intermark Srl v OHIM

(Case T-72/10)

(2010/C 113/83)

Language in which the application was lodged: Hungarian

Parties

Applicant(s): Intermark Srl (Steii, Romania) (represented by: Á.M. László, ügyvéd)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party/parties to the proceedings before the Board of Appeal of OHIM: Natex International Trade SpA (Piolтелно, Italy)

Form of order sought

— Amendment of the decision of the defendant and dismissal in its entirety of the application for registration with regard to all goods;

— An order that the defendant bear the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Natex International Trade SpA

Community trade mark concerned: the word mark 'NATY'S' for goods in classes 29, 30 and 32 (application for registration No 5 810 627)

Proprietor of the mark or sign cited in the opposition proceedings: the applicant

Mark or sign cited in opposition: the figurative mark 'Naty' for goods and services in classes 30 and 35 (Community trade mark No 4 149 456)

Decision of the Opposition Division: opposition upheld in part

Decision of the Board of Appeal: dismissal of the application

Pleas in law: breach of Article 8(1)(b) of Regulation (EC) No 207/2009, (¹) in that there is a likelihood of confusion between the marks at issue.

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

Action brought on 17 February 2010 — Embraer and others v Commission

(Case T-75/10)

(2010/C 113/84)

Language of the case: English

Parties

Applicants: Empresa Brasileira de Aeronáutica, SA (Embraer) (São José dos Campos, Brazil), Embraer Aviation Europe SAS (EAE) (Villemontais, France), Indústria Aeronáutica de Portugal SA (OGMA) (Alverca do Ribatejo, Portugal) (represented by: U. O'Dwyer and A. Martin, Solicitors)