

Form of order sought

— Annul the second sentence of Article 8(2) of Regulation (EU) No 1210/2010 of the European Parliament and of the Council of 15 December 2010 concerning authentication of euro coins and handling of euro coins unfit for circulation;

— Order the defendants to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested regulation infringes Articles 15 and 16 of the Charter of Fundamental Rights of the European Union

— The applicant submits in that regard that Article 8(2) of Regulation (EU) No 1210/2010 ⁽¹⁾ infringes its freedom to exercise its professional activities and its commercial freedom, since it suffered a decline in turnover after the entry into force of the contested regulation.

2. Second plea in law, alleging that the contested regulation infringes Article 17 of the Charter of Fundamental Rights of the European Union

— The applicant submits that Article 8(2) of Regulation No 1210/2010 also infringes its right of ownership, since that rule restricts the exercise of its right in the established and operating business.

— Further, the contested regulation makes possible a direct infringement of the applicant's property rights, since the euro coins in its possession are being withdrawn without compensation.

3. Third plea in law, alleging the unsuitability of the contested regulation for the achievement of the aim pursued and the disproportionality of the contested regulation

— In that regard, the applicant submits that the freedom to exercise professional activities, commercial freedom and property rights can be subject to restrictions, in so far as they pursue aims in the general interest and do not represent a disproportionate infringement in relation to the aim pursued. The applicant states that the contested regulation is superfluous, unsuitable to achieve the legislature's aim and not capable of justifying infringement of the applicant's fundamental rights.

⁽¹⁾ Regulation (EU) No 1210/2010 of the European Parliament and of the Council of 15 December 2010 concerning authentication of euro coins and handling of euro coins unfit for circulation (OJ 2010 L 339, p. 1).

Action brought on 11 March 2011 — Telefónica de España and Telefónica Móviles España v Commission

(Case T-151/11)

(2011/C 145/53)

Language of the case: Spanish

Parties

Applicants: Telefónica de España Madrid, Spain and Telefónica Móviles España (Madrid, Spain) (represented by: F. González Díaz, F. Salerno, lawyers)

Defendant: European Commission

Form of order sought

— annul, in accordance with Article 263 TFEU, the decision of the European Commission of 20 July 2010;

— in any event, order the Commission to pay the costs.

Pleas in law and main arguments

The present case is directed against the Commission decision of 20 July 2010, concerning the aid scheme C 38/09 (ex NN 58/09) which Spain is planning to implement for Corporación de Radio y Televisión Española (RTVE) (OJ 2010 L 1, p. 9) declaring compatible with the internal market on the basis of Article 106(2) TFEU the new financing model for the public television broadcasting body Corporación de Radio y Televisión Española introduced by Law 8/2009 of 28 August 2009.

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

1. First plea in law, alleging an infringement of Article 108(2) TFEU, in so far as the Commission has failed to initiate the procedure provided for in that provision in relation to the separation of the financing from the contested measure as a whole.

2. Second plea in law, alleging infringement of Article 108 TFEU, in so far as the Commission establishes the separation of the financing of the measure as a whole and incorrectly defines as new aid only the additional financing. Acting in this way, the Commission does not comply with the case-law or the Commission's decision-making practice

3. Third plea in law, alleging infringement of Article 56 TFEU, since the decision does not provide any explanation as to how it reached the conclusion that the three fiscal measures introduced or amended by Articles 4, 5 and 6 of Law 8/2009 are dissociable from RTVE's current system of financing.

4. Error of law by dissociating the source of financing of the measure, in so far as the incompatibility of the sources of finance with Community law must necessarily involve its incompatibility with the rules on State aid. The applicant asserts in that regard that the contested decision declares compatible an aid linked to financing that the Commission, in parallel proceedings, has held to be contrary to European Union law.
5. Infringement of Article 106(2) TFEU and/or Article 256 TFEU on the ground that the statement of reasons is inadequate as regards the absence of overcompensation and the impact of the measure on competition in the internal market. In particular, the decision fails to take account of the fact that RTVE's actual future costs will be less than the costs incurred in the past and declares compatible with the internal market a measure which guarantees protection 'against the fluctuations in revenue in the advertising market', in spite of the fact that there is no commercial risk.

Action brought on 10 March 2011 — Marszałkowski v OHIM — Mar-Ko Fleischwaren (WALICHNOWY MARKO)

(Case T-159/11)

(2011/C 145/54)

Language in which the application was lodged: Polish

Parties

Applicant: Marek Marszałkowski (Sokolniki, Poland) (represented by: C. Sadkowski, lawyer)

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

Other party to the proceedings before the Board of Appeal: Mar-Ko Fleischwaren GmbH & Co. KG (Blankenhain, Germany)

Form of order sought

— annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 11 January 2011 (Case R 760/2010-4) refusing registration of the mark 'Marko Walichnowy' as a Community trade mark in so far as it relates to goods in Class 29: meat, products made from meat and poultry meat, including pies, tripe, sausage with cabbage, meat preserves and products made from meat and vegetables, including bigos, poultry (including packaged poultry), meatballs in a vegetable sauce;

— alternatively, amend the contested decision by taking account of the sound basis for registration of the

Community trade mark 'Marko Walichnowy' in so far as it relates to the aforementioned goods in Class 29;

— order the defendant to pay the costs of the proceedings, including the costs of the applicant's representation in the proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: figurative trade mark containing the word element 'Marko Walichnowy' for goods in Class 29 — Application No 007161541

Proprietor of the mark or sign cited in the opposition proceedings: Mar-Ko Fleischwaren GmbH & Co. KG

Mark or sign cited in opposition: Community word mark 'Mar-Ko' for certain goods in Class 29

Decision of the Opposition Division: dismissal of the opposition

Decision of the Board of Appeal: annulment of the decision of the Opposition Division and rejection of the application for the following goods in Class 29: meat, products made from meat and poultry meat, including pies, tripe, sausage with cabbage, meat preserves and products made from meat and vegetables, including bigos, poultry (including packaged poultry), meatballs in a vegetable sauce

Pleas in law: breach of Article 8(1)(b) of Regulation No 207/2009 ⁽¹⁾ in so far as the contested decision establishes a similarity between the trade marks and the possibility that consumers might be misled

⁽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 March 2011 — Häfele v OHIM (Infront)

(Case T-166/11)

(2011/C 145/55)

Language of the case: German

Parties

Applicant: Häfele GmbH & Co. KG (Nagold, Germany) (represented by M. Eck and J. Dönch, lawyers)

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