

2. Second plea in law, alleging infringement of the fundamental right to equal treatment

— Secondly, the applicant alleges infringement of its fundamental right to equal treatment in the sense that arbitrary decisions are prohibited; as an organic dairy, it is prevented from producing and marketing organic yoghurt with organic steviol glycosides, whereas its competitors, who produce yoghurts in conventional agriculture, are permitted to use steviol glycosides. The use of organic steviol glycosides as a food additive is prohibited under Article 19(2)(b) of Regulation (EC) No 834/2007,<sup>(3)</sup> according to which only food additives which have been authorised for organic products may be used in production. No such authorisation was forthcoming either in Article 27(1)(a) of Regulation (EC) No 889/2008<sup>(4)</sup> or as a result of inclusion in the positive list in Section A of Annex VIII to that regulation. By approving steviol glycosides as food additives only, the Commission therefore unlawfully interfered in the market to the benefit of producers of conventional products, thereby impeding competition.

3. Third plea in law, alleging infringement of the fundamental right to the protection of property and of the freedom to exercise an economic activity

— Thirdly, the applicant alleges infringement of its fundamental right to the protection of property and of its freedom to exercise an economic activity.

4. Fourth plea in law, alleging a failure to state reasons

— The reasons given for Regulation No 1131/2011 are, moreover, insufficient, as no explanation is given in the recitals in the preamble as to why steviol glycosides, which serve only to impart flavour, to sweeten and to add a slightly tart taste, are treated as food additives.

<sup>(1)</sup> Commission Regulation (EU) No 1131/2011 of 11 November 2011 amending Annex II to Regulation (EC) No 1333/2008 of the European Parliament and of the Council with regard to steviol glycosides (OJ 2011 L 295, p. 205).

<sup>(2)</sup> Regulation (EC) No 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives (OJ 2008 L 354, p. 16).

<sup>(3)</sup> Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) No 2092/91 (OJ 2007 L 189, p. 1).

<sup>(4)</sup> Commission Regulation (EC) No 889/2008 of 5 September 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control (OJ 2008 L 250, p. 1).

## Action brought on 16 January 2012 — Hagenmeyer and Hahn v Commission

(Case T-17/12)

(2012/C 89/44)

*Language of the case: German*

### Parties

*Applicants:* Moritz Hagenmeyer (Hamburg, Germany) and Andreas Hahn (Hanover, Germany) (represented by: T. Teufer, lawyer)

*Defendant:* European Commission

### Form of order sought

The applicants claim that the Court should:

— annul the part of Commission Regulation (EU) No 1170/2011 of 16 November 2011 refusing to authorise certain health claims made on foods and referring to the reduction of disease risk (OJ 2011 L 299, p. 1) concerning the applicant's claim 'Regular consumption of significant amounts of water can reduce the risk of development of dehydration and of concomitant decrease of performance';

— order the defendant to pay the costs of the proceedings.

### Pleas in law and main arguments

Pursuant to Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods,<sup>(1)</sup> health claims made on foods are prohibited in so far as they are not authorised by the Commission in accordance with that regulation and have not been added to the list of permissible claims.

This action has been brought against Commission Regulation (EU) No 1170/2011 of 16 November 2011 refusing to authorise certain health claims made on foods and referring to the reduction of disease risk,<sup>(2)</sup> in so far as that regulation rejected the applicants' application to have added to the list of permissible claims its claim regarding the reduction of a disease risk, namely 'regular consumption of significant amounts of water can reduce the risk of development of dehydration and of concomitant decrease of performance'.

In support of their action, the applicants rely on nine pleas in law.

1. First plea in law: The dispensability of the naming of a 'risk factor'

The applicants claim, first of all, that the defendant declared it mandatory that a 'risk factor' be named in the application, although no such obligation results from Regulation No 1924/2006.

2. Second plea in law: Failure to take account of the actual naming of a 'risk factor' in the application.

The applicants allege that the defendant overlooked the fact that the applicants actually named a 'risk factor' in the wording of the health claim which they made.

3. Third plea in law: Infringement of the principle of proportionality

The applicants submit that, on the whole, Regulation No 1170/2011 is disproportionate.

4. Fourth plea in law: Absence of a sufficient legal basis

In the view of the applicants, the contested regulation lacks a sufficient legal basis, since it is based on Article 17, in conjunction with Article 14(1)(a) and Article 10(1), of Regulation No 1924/2006, which infringe European Union law and, in particular, the principle of proportionality.

5. Fifth plea in law: Inadmissible legislative act

The applicants submits that the defendant infringed essential procedural requirements in that, instead of issuing a decision, as provided for in Regulation No 1924/2006, it issued a regulation.

6. Sixth plea in law: Infringement of the division of competences

The applicants claim, in this regard, that the division of competences, provided for in Regulation No 1924/2006, between the defendant, the European food safety authority and the German Federal Office for consumer protection and food security, was not respected by the defendant in the procedure.

7. Seventh plea in law: Failure to adopt a decision within the time-limit prescribed

The applicants claim that the defendant failed to respect the imperative time-limits laid down in Regulation No 1924/2006 in relation to the forwarding of the application for authorisation, the issuing of the scientific opinion, and the issuing of the decision on whether the claim was to be authorised.

8. Eighth plea in law: Inadequate consideration of the submissions

The applicants submit that the defendant infringed essential procedural requirements since, in its decision on whether to

authorise the claim, it failed to take account of a significant part of the applicants' submissions and those of third parties involved in the procedure.

9. Ninth plea in law: Erroneous grounds

Finally, the applicants claim that the defendant did not sufficiently comply with its obligation under Article 296(2) TFEU to provide the grounds on which its decision was based.

<sup>(1)</sup> Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods (OJ 2006 L 404, p. 9).

<sup>(2)</sup> Commission Regulation (EU) No 1170/2011 of 16 November 2011 refusing to authorise certain health claims made on foods and referring to the reduction of disease risk (OJ 2011 L 299, p. 1).

## Action brought on 17 January 2012 — Alfacam and Others v Parliament

(Case T-21/12)

(2012/C 89/45)

*Language of the case: French*

### Parties

*Applicants:* Alfacam (Lint, Belgium); Via Storia (Schiltigheim, France); DB Video Productions (Aartselaar, Belgium); IEC (Rennes, France); and European Broadcast Partners (EUBROPA) (Aartselaar) (represented by: B. Pierart, lawyer)

*Defendant:* European Parliament

### Form of order sought

— Annul the decision adopted by the European Parliament on 18 November 2011 which awards to the Belgian company WATCH TV S.A. the contract EP/DGCOMM/AV/11/11 lot 1 Provision of video, radio and multimedia services — Services to be provided to the European Parliament in Brussels;

— accordingly, annul the decision adopted by the European Parliament which did not accept the tender of the first four applicants, acting within the framework of the consortium EUROPEAN BROADCAST PARTNERS, that tender ranking second for the contract EP/DGCOMM/AV/11/11 lot 1 Provision of video, radio and multimedia services — Services to be provided to the European Parliament in Brussels;

— order the European Parliament to pay the costs of the proceedings.