GENERAL COURT

Action brought on 25 July 2013 — La Ferla v Commission and ECHA

(Case T-392/13)

(2013/C 291/03)

Language of the case: Italian

Parties

Applicant: Leone La Ferla SpA (Melilli, Italy) (represented by: G. Passalacqua, J. Occhipinti and G. Calcerano, lawyers)

Defendants: European Chemicals Agency (ECHA), European Commission

Form of order sought

The applicant claims that the Court should:

— annul the contested measures in their entirety or to the extent that the Court may deem just and in the interests of the applicant;

— consequently, order the ECHA to repay the sums wrongly received from the applicant, together with statutory interest and compensation for monetary inflation from the date on which the payments made by the applicant were credited to the ECHA, until repayment in full;

— or, cumulatively or alternatively, order the ECHA to make good the damage sustained by Leone La Ferla Spa, in the amount of the abovementioned sums wrongly received from the applicant, together with statutory interest and compensation for monetary inflation from the date on which the payments made by the applicant were credited to the ECHA, until such damage is made good;

— order the defendants to pay the costs.

Pleas in law and main arguments

The applicant in the present case contests the decision whereby the ECHA — finding that the applicant had failed to prove that it was a small or medium-sized enterprise (SME) — ordered it to pay the registration fees at the rates laid down for large enterprises and to pay the corresponding administrative charge.

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

1. By its first plea in law, the applicant submits that the ECHA unlawfully exceeded its powers, which are limited to ascertaining whether the applicant undertaking is entitled to the reduced fee payable by SMEs, by putting itself in the place of the Commission in adopting the decision concerning that entitlement and by applying in an arbitrary manner, in order to determine whether the applicant had the legal status of an SME, substantive criteria other than those laid down by the Commission in Regulation No 340/2008. [1]

   The power to adopt decisions concerning entitlement to the reduced tariff for SMEs involves an assessment as to whether the criteria of Recommendation 2003/361/EC, on Community finance for SMEs, are applicable to the size of the enterprise registered; that assessment is not a matter for the ECHA Secretariat but for the Commission alone, since neither the REACH Regulation nor the Commission's implementing regulations have provided an *ad hoc* definition.

   In addition, as regards ascertaining the legal status of an SME, Commission Regulation (EC) 340/2008 expressly restricts the application of the sub-criteria of Recommendation 2003/361/EC, relating to holdings in other companies, to enterprises not established in the European Union. It follows, conversely, that those criteria may not be applied in evaluating the size of an enterprise established in the European Union in order to check whether the latter is entitled to the reduced fee.

2. By its second plea in law, the applicant submits that, in any event, the ECHA has in this case unlawfully applied the abovementioned sub-criteria by failing to take into account that Leone La Ferla S.p.a. is a family enterprise, since all its shares are owned by the La Ferla brothers. For that reason, no importance should have been attached, even under the sub-criteria in question, to the partnerships and links with other enterprises, given that none of the other enterprises linked to the applicant operates in the same market as it does or in adjacent markets (Article 3(3) of Annex I to Recommendation 361/2003/EC).

3. By its third plea in law, the applicant submits that the contested measure was unlawfully signed by the Executive Director of ECHA, since the REACH Regulation does not provide that the Executive Director may adopt decisions relating to the size of the enterprises requesting registration.

4. By its fourth plea in law, the applicant challenges the legality of Decisions ECHA MB/D/29/2010 and MB/D/21/2012/D whereby the Agency set the amount of the 'administrative charge', arbitrarily varying its amount between several financial values, whereas in reality the charge will be imposed only at the highest rate. Such decisions are unlawful — as therefore are the provisons implementing them — given that it is for the Commission to establish the exact amount of all the fees and charges provided for under the REACH Regulation (the ECHA may provide only a classification of services 'other' than those specific to the

REACH system) and that the 'administrative charge' will be paid to the ECHA budget. In addition, since such a 'charge' constitutes an administrative penalty, intended to deter improper conduct or the withholding of information by enterprises, that charge must be determined by the Member States in accordance with the REACH Regulation.

(1) 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 6 August 2013 — Tilly-Sabco v Commission

(Case T-397/13)

(2013/C 291/04)

Language of the case: French

Parties

Applicant: Tilly-Sabco (Guerlesquin, France) (represented by: R. Milchior and F. Le Roquais, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare admissible the action for annulment of Commission Implementing Regulation (EU) No 689/2013 of 18 July 2013 fixing the export refunds on poultry meat (OJEU L 196/13 of 19 July 2013);

— annul Commission Implementing Regulation (EU) No 689/2013 of 18 July 2013 fixing the export refunds on poultry meat (OJEU L 196/13 of 19 July 2013);

— order the Commission to pay the costs of these proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging abuse of process, since the internal rules of the management committee were infringed in so far as the Commission did not permit the committee to consider all the information necessary in order to give its opinion on the draft text to be adopted in accordance with the procedure laid down in Regulation No 182/2011. (1)

2. Second plea in law, alleging a procedural irregularity and lack of competence, since the contested regulation was adopted under the signature of the Director-General for Agriculture and Rural Development on behalf of the President of the Commission, without it being shown that an act of delegation and a declaration of self-certification exist.

3. Third plea in law, alleging inadequacy of the statement of reasons for the contested regulation, in so far as:

   — recital 6 in the preamble to the regulation cannot constitute a sufficient statement of reasons for a regulation which departs from the normal practice of the Commission of fixing the amount of refunds according to the difference between the price of the goods concerned on the Community market, on the one hand, and on the world market, on the other, and

   — the statement of reasons is inconsistent and contradictory in that it is an identical reproduction of the earlier Implementing Regulation No 360/2013 without taking into account the progressive criteria set out in Article 164 of Regulation No 1234/2007. (2)

4. Fourth plea in law, alleging infringement of the law or at least a manifest error of assessment, since the information furnished by the Commission to the management committee does not satisfy the criteria laid down in Article 164(3) of Regulation No 1234/2007.

5. Fifth plea in law, alleging infringement of legitimate expectations, in so far as the applicant legitimately expected, following assurances received from the Commission, the system of positive refunds to continue until the end of the current common agricultural policy.

(1) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ 2011 L 55, p.13).

(2) Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ 2007 L 299, p. 1).

Action brought on 21 August 2013 — Doux v Commission

(Case T-434/13)

(2013/C 291/05)

Language of the case: French

Parties

Applicant: Doux SA (Châteaulin, France) (represented by: J. Vogel, lawyer)

Defendant: European Commission