Action brought on 1 september 2015 — Izba Gospodarcza Producentów i Operatorów Urządzeń Rozrywkowych/Commission

(Case T-514/15)

(2015/C 371/33)

Language of the case: English

Parties

Applicant: Izba Gospodarcza Producentów i Operatorów Urządzeń Rozrywkowych (Warsaw, Poland) (represented by: P. Hoffman, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Commission of 12 June 2015, GESTDEM 2015/1291, refusing the applicant access to the detailed opinion issued by the European Commission in the framework of the notification procedure 2014/537/PL,

— annul the decision of the Commission of 17 July 2015, GESTDEM 2015/1291, refusing the applicant access to the detailed opinion issued by the Republic of Malta in the framework of the notification procedure 2014/537/PL,

— order the Commission to bear its own costs and to pay the costs of the applicant.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the third indent of Art. 4(2) of regulation (EC) no 1049/2001 ([1]) by refusing access to the detailed opinion of the Commission

   — The third indent of Art. 4(2) of regulation 1049/2001 cannot reasonably be construed as meaning that a document in the Commission's possession cannot be disclosed if this could undermine the purpose of any inspection, investigation or audit, even if the document was not drafted in the framework, or for the purposes, of such an inspection, investigation or audit.

   — No general presumption that disclosing a document would undermine the protection of the purpose of infringement proceedings can be applicable to a document produced in the framework of a notification procedure, given that no such general presumption exists with respect to such a procedure.

   — The Commission's claim that its opinion concerns a measure intended to remedy an infringement of EU law and that it includes references to the Commission's letter of formal notice initiating infringement proceedings and an appraisal of the notified measure in light of those proceedings, does not demonstrate the existence of any general presumption that the detailed opinion should not be disclosed.

   — The Commission's position is inconsistent insofar as it bases its decision on a general presumption, but at the same time relies on the specifics of 'this particular case'.

2. Second plea in law, alleging infringement of Art. 4(6) of regulation 1049/2001 and of Art. 296 TFEU by refusing partial access to the Commission's detailed opinion

— In any case, the Commission should have disclosed its detailed opinion in part, i.e. after having removed any references to the letter of formal notice concerning the infringement proceedings.

3. Third plea in law, alleging infringement of Art. 4(2) of regulation 1049/2001 by refusing access to the Commission's detailed opinion even though an overriding public interest in disclosure exists

— Given that the detailed opinion concerned a measure that was already being processed in Parliament and that it led to that measure being amended, its disclosure is necessary in order for members of Parliament to understand the reason why they are asked by the government to amend the bill presented to them. Therefore an overriding public interest in disclosure exists. The democratic process cannot function correctly if the Parliament is asked to implement the Commission's opinions, when these are not disclosed.

— Since the legality of the notification process and, therefore, the enforceability of the adopted bill may depend on the text of the Commission's opinion, an overriding public interest in its disclosure exists based on the right to legal certainty.

4. Fourth plea in law, alleging infringement of recital 3 and Art. 8(4) of directive 98/34/EC ([2]) by refusing access to the Commission's detailed opinion

— The refusal to disclose the detailed opinion is incompatible with the nature of directive 98/34, which is based on transparency; this is especially true where the Member State concerned did not invoke the confidentiality clause under Art. 8(4) of the directive.

5. Fifth plea in law, alleging infringement of the third indent of Art. 4(2), of Art. 4(5) and of Art. 4(6) of regulation 1049/2001 by refusing access to Malta's detailed opinion

— The refusal to grant access to the opinion may not be based on the mere fact that the Commission intends to take Malta's detailed opinion into account when taking a decision as to ongoing infringement proceedings, or that it has placed that opinion in the file of those proceedings.

6. Sixth plea in law, alleging infringement of Art. 296 TFEU by refusing access to Malta's detailed opinion.

— The Commission originally refused to rule on the disclosure of Malta's opinion on grounds that could only be interpreted as meaning that the decision will depend on whether the Commission accepts the judgment of the General Court in case T-402/12, Carl Schlyter v Commission, under which detailed opinions are subject to disclosure, or rejects and, consequently, appeals it. However, the Commission did not appeal that judgment and refused disclosure on grounds that have nothing to do with it which the Commission itself must have considered insufficient, because otherwise it should have issued a negative decision even before the appeal period in case T-402/12 expired.

([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)

([2]) Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ 1998 L 204, p. 37)