

**Action brought on 28 April 2017 — Casino, Guichard-Perrachon and EMC Distribution v Commission**

**(Case T-249/17)**

(2017/C 221/45)

*Language of the case: French*

**Parties**

*Applicants:* Casino, Guichard-Perrachon (Saint-Étienne, France) and EMC Distribution (Vitry-sur-Seine, France) (represented by: D. Théophile, I. Simic, O. de Juvigny and T. Reymond, lawyers)

*Defendant:* European Commission

**Form of order sought**

The applicants claim that the Court should:

- prior to delivering judgment, order the Commission, pursuant to Article 89 and Article 90 of the Court's Rules of Procedure, to produce all of the documents and other information on the basis of which, on the date of Decision C (2017) 1054, it considered that it had sufficiently strong evidence to justify carrying out an inspection at the applicants' premises;
- declare inapplicable in the present case, pursuant to Article 277 TFEU, Article 20 of Regulation No 1/2003 and, consequently, annul Commission Decision C(2017) 1054 of 9 February 2017;
- annul, pursuant to Article 263 TFEU, European Commission Decision C(2017) 1054 of 9 February 2017;
- order the Commission to pay all of the costs.

**Pleas in law and main arguments**

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

1. First plea in law, alleging the illegality of the European Commission Decision of 9 February 2017 ordering the applicants to undergo an inspection pursuant to Article 20(1) and (4) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1), a decision which is contested in the present case ('the contested decision'). The applicants claim in this regard that:
  - the contested decision is based on a provision which is itself illegal and therefore inapplicable in the present case, in accordance with Article 277 of the Treaty on the Functioning of the European Union ('TFEU');
  - Article 20 of Regulation No 1/2003 infringes the fundamental right to an effective remedy laid down in Article 47 of the European Union Charter of Fundamental Rights of the European Union ('the Charter') and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ('ECHR'), in that it does not allow undertakings to which a Commission inspection decision is addressed to bring effective proceedings to challenge the manner in which the inspection is carried out;
  - that provision also infringes the principle of equality of arms and the rights of defence laid down in Article 47 and 48 of the Charter and Article 6 of the ECHR, in that it does not allow the parties to obtain access to the documents underlying the Commission's decision to carry out an inspection.
2. Second plea in law, alleging an infringement of the fundamental right to the inviolability of the home, laid down in Article 7 of the Charter and Article 8 of the ECHR, in that the contested decision is valid for an indefinite period and is both imprecise and disproportionate in its scope of application, since:
  - the contested decision specifies only the date on which the inspection may start but provides neither an end date nor a maximum duration for the inspection;
  - it applies to all companies of the Casino group, irrespective of their activity and geographical location, without identifying any one individually, except for its parent company;
  - it allows the inspection to be carried out at any of the group's premises.

3. Third plea in law, alleging infringement of the Commission's obligation to state reasons, in that the contested decision does not state the type, nature, origin or content of the information with respect to which the Commission has decided to order an inspection.
4. Fourth plea in law, alleging that the contested decision infringes the fundamental right to inviolability of the home, laid down in Article 7 of the Charter and in Article 8 of the ECHR, in that it was adopted without the Commission having sufficiently strong evidence to justify the carrying out of an inspection at the applicants' premises.
5. Fifth plea in law, alleging infringement of the principle of proportionality by reason of the adoption of the contested decision inasmuch as that decision provided for the start of the inspection on a date which is extremely disadvantageous for the applicants' activity, even though another date, significantly less restrictive for them, could have been set, without any inconvenience for the Commission. In that regard, the applicants submit that, although it concerns specifically the premises of the entity within the Casino group responsible for negotiations with suppliers, the contested decision provides for the inspection to start on 20 February 2017 or shortly thereafter, that is to say the final week of negotiations concerning the annual agreements with suppliers, which Article L. 441-7 of the French code de commerce (Commercial Code) requires should be concluded before 1 March of the current year, this being a fact of which, it is submitted, the Commission was perfectly aware.

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**Action brought on 3 May 2017 — RE v Commission**

(Case T-257/17)

(2017/C 221/46)

*Language of the case: English*

**Parties**

*Applicant:* RE (represented by: S. Pappas, lawyer)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the Court should:

- order the annulment of the Security Directorate's implied decision tacitly rejecting the applicant's confirmatory application for access to documents of 20 January 2017;
- order the defendant to pay to the applicant a fair and equitable compensation for non-material damages from the unlawful refusal to treat his access to documents application in violation of the provision of Regulation No 1049/2001 <sup>(1)</sup>; and,
- order the defendant to bear its own costs as well as the costs of the applicant in the current proceedings.

**Pleas in law and main arguments**

With the present application, the applicant asks for the annulment of the aforementioned contested implied decision for two reasons: firstly the failure of the contested decision to state reasons as regards the non-disclosure of the 15 documents requested by the applicant, which were not mentioned in the decision of 22 December 2016 that rejected the applicant's initial request for access to documents; and secondly, the lack of, or, in any case, the erroneous justification for the non-disclosure of the other documents, if it were to be considered that the reasoning of the decision of 22 December 2016 rejecting the applicant's initial request for access is incorporated in the contested implied decision.

Finally, the applicant requests the award of appropriate compensation for the moral damage he incurred, which stemmed from the administration's persistent delays and the unlawful refusal to grant him access to the documents in question, in violation of the provisions of Regulation 1049/2001.

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<sup>(1)</sup> 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 L 145, 2001, p. 43)