

— Order the Commission to pay the costs.

### **Pleas in law and main arguments**

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

1. First plea in law, alleging infringement of Article 4(2)(b), (c) and (d), and Article 4(3) of Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative <sup>(2)</sup>

The first and second parts of the European citizens' initiative registered under the contested decision are manifestly outside the scope of the Commission's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties. For that reason, the registration of the initiative infringes Article 4(2)(b) and Article 4(3) of Regulation (EU) No 211/2011. Furthermore, the first part of the initiative is abusive and, consequently, is also contrary to Article 4(2)(c) of Regulation (EU) No 211/2011. As regards the second part, it can be argued that it can lead to a result contrary to the values of the EU established in Article 2 TEU, and is therefore also contrary to Article 4(2)(d) of Regulation (EU) No 211/2011.

2. Second plea in law, alleging infringement of Article 296 TFEU and Article 41 of the Charter of Fundamental Rights of the European Union

The contested decision does not satisfy the requirements relating to the obligation to state reasons, and therefore infringes the obligation to state reasons established in Article 296 TFEU and the right to good administration provided for in Article 41 of the Charter of Fundamental Rights. In essence, the contested decision does not give any indication of the grounds on which the Commission found that, as regards the third part of the initiative, there is an appropriate legal basis and legislative power of the EU which meets the requirement established in Article 4(2)(b) of Regulation (EU) No 211/2011 relating to the registration.

<sup>(1)</sup> OJ 2018 L 49, p. 64.

<sup>(2)</sup> OJ 2011 L 65, p. 1; corrigendum in OJ 2011 L 330, p. 47, and in OJ 2012 L 94, p. 49.

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## **Action brought on 28 May 2018 — VI.TO. v EUIPO — Bottega (Shape of a pink bottle)**

**(Case T-325/18)**

(2018/C 268/49)

*Language in which the application was lodged: Italian*

### **Parties**

*Applicant:* Vinicola Tombacco (VI.TO.) Srl (Trebaseleghe, Italy) (represented by: L. Giove, lawyer)

*Defendant:* European Union Intellectual Property Office (EUIPO)

*Other party to the proceedings before the Board of Appeal:* Sandro Bottega (Colle Umberto, Italy)

### **Details of the proceedings before EUIPO**

*Proprietor of the trade mark at issue:* Other party to the proceedings before the Board of Appeal

*Trade mark at issue:* European Union three-dimensional mark (Shape of a pink bottle) – European Union trade mark No 12 309 795

*Procedure before EUIPO:* Proceedings for a declaration of invalidity

*Contested decision:* Decision of the First Board of Appeal of EUIPO of 14 March 2018 in Case R 1037/2017-1

**Form of order sought**

The applicant claims that the Court should:

- annul the contested decision;
- order EUIPO to pay the costs.

**Pleas in law**

- Incorrect assessment of the ground for refusal laid down in Article 7(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;
- Incorrect assessment of the ground for refusal laid down in Article 7(1)(e)(i), (ii) and (iii) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

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**Action brought on 28 May 2018 — Gas Natural v Commission**

(Case T-328/18)

(2018/C 268/50)

*Language of the case: Spanish*

**Parties**

*Applicant:* Gas Natural SDG, SA (Madrid, Spain) (represented by: F. González Díaz and V. Romero Algarra, lawyers)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the General Court should:

- Declare admissible and well founded the grounds of annulment set out in this action.
- In accordance with Article 263 TFEU, annul the Commission Decision of 27 November 2017 in file SA.47912 (2017/NN) opening the formal investigation procedure provided for in Article 108(2) TFEU relating to the environmental investment incentive granted by the Kingdom of Spain to coal-fired power stations.
- Order the Commission to pay the costs.

**Pleas in law and main arguments**

The contested decision in this case opened the formal investigation procedure, provided for in Article 108(2) TFEU, relating to the environmental investment incentive granted by the Kingdom of Spain to coal-fired power stations.

According to the applicant, it is apparent from the contested decision that the Commission harbours doubts as to whether the emission limit values imposed on plants that receive that environmental investment incentive are simply aimed at applying the protection levels required by EU law and, in particular, by Directive 2001/80/EC, which applies to coal-fired power stations. If that were the case, the environmental investment incentive would not provide any incentive at all. Furthermore, the environmental investment incentive would be contrary to the principle of EU law regarding State aid, according to which Member States cannot grant public aid to undertakings so that the latter can comply with binding EU laws.

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