

C/2024/6106

21.10.2024

**Action brought on 27 August 2024 – Dryade and Others v Commission****(Case T-449/24)**

(C/2024/6106)

*Language of the case: English***Parties**

*Applicants:* Dryade VZW (Brussels, Belgium), Stichting ter bevordering van de Fossielvrij-beweging (Fossielvrij NL) (Amsterdam, Netherlands), Protect Our Winters Austria - Verein für Klimabildung und nachhaltigen Wintertourismus (Vienna, Austria) (represented by: T. Johnston, Barrister-at-Law and F. Logue, Solicitor)

*Defendant:* European Commission

**Form of order sought**

The applicants claim that the Court should:

- annul the decision of the Commission sent by letter of the 17 June 2024, by which the Commission rejected a request for internal review dated 14 January 2024 brought pursuant to Article 10 of the Aarhus Regulation ('the Decision under Challenge') of Commission Delegated Regulation (EU) 2023/2485 of 27 June 2023 amending Delegated Regulation (EU) 2021/2139 establishing additional technical screening criteria for determining the conditions under which certain economic activities qualify as contributing substantially to climate change mitigation or climate change adaptation and for determining whether those activities cause no significant harm to any of the other environmental objectives; <sup>(1)</sup> and
- order the defendant to pay the applicants' costs of these proceedings.

**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 that the decision under challenge discloses clear errors of law as to the extent of the Commission's competence, when exercising the delegated power to make Technical Screening Criteria ('TSC') (pursuant to Regulation (EU) 2020/852 (the 'Taxonomy Regulation')). <sup>(2)</sup> The Commission: misunderstood the meaning of the term 'conclusive scientific evidence' (Article 19(1)); erred as to the meaning and application of the precautionary principle (in the context of the Taxonomy Regulation); erred when it held that the Commission has competence to balance the various mandatory requirements within Article 19(1) of the Taxonomy Regulation; erred when it proceeded on the presumption that existing EU legislation is compatible with the requirements of the Taxonomy Regulation; erred when it presumed that subsequent amendments to the TSC may justify adopting of less exacting standards.
2. Second plea in law, alleging that the decision under challenge erred in law as to the extent of Commission's competence when it concluded that the replacement ratio, a fundamental aspect of the Aviation TSCs, satisfied the requirements of Article 19(1)(k) of the Taxonomy Regulation. The replacement ratio is not easy to use and is not set in a manner that facilitates the verification of compliance.
3. Third plea in law, alleging that the decision under challenge is vitiated by manifest errors of assessment as to substantial contribution to climate change mitigation, as to the categorisation of aircraft activities complying with TSC as a transitional activity, as regards global fleet growth, as regards sustainable aviation fuels thresholds and as regards failure to take into account modal shift to rail or non-CO<sup>2</sup> effects.

<sup>(1)</sup> OJ 2023, L 2485.

<sup>(2)</sup> Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ 2020, L 198, p. 13).

4. Fourth plea in law, alleging that the Commission lacked competence to adopt the TSC for Shipping in the Delegated Act. In declining to review the Delegated Act, and finding that the Commission had competence to adopt it, the Decision under Challenge discloses a number of clear errors of law.
  5. Fifth plea in law, alleging that the Commission fell into manifest error when it found that there was conclusive scientific evidence to support the conclusion that the energy efficiency design index TSC makes a substantial contribution to climate change mitigation. This is the case, even adopting the Commission's own test that there must be '...scientific evidence that is not inconclusive, or in other words, scientific evidence that allows conclusions to be reached.'
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