The determination of the product benchmark for sintered ore is also at variance with Article 10a(1) of Directive 2003/87, as the Commission corrected data when determining the product benchmark for sintered ore. This, it is submitted, is not in line with the criteria for determining benchmarks which are laid down in Article 10a(1) of Directive 2003/87.

2. Second plea in law: the product benchmark for hot metal breaches Article 10a of Directive 2003/87

The determination of the product benchmark for hot metal, the applicants submit, also breaches Article 10a of Directive 2003/87, as the Commission did not take into account the full carbon content of the residual gases resulting from iron and steel production in respect of their use for electricity generation, but carried out reductions in the amount of approximately 25 %. It follows from the wording of the second sentence of the third subparagraph of Article 10a(1) of Directive 2003/87, from the general structure and purpose of that directive, and from its historical construction, that the Commission is not entitled to carry out such reductions.

3. Third plea in law: breach of the obligation under the second paragraph of Article 296 TFEU to state reasons

The applicants submit further that the Commission has failed to provide adequate reasons for its decision. The reasons given for the determination of the benchmarks are, it is submitted, deficient. Nor has the Commission provided proper grounds for the reservations which it has expressed concerning possible distortions of competition. This amounts to a breach of the second paragraph of Article 296 TFEU.

4. Fourth plea in law: infringement of the principle of proportionality

The contested decision, the applicants submit, also infringes the principle of proportionality with regard to the determination of the benchmarks for sintered ore and hot metal.

5. Fifth plea in law: infringement of the principle of equal treatment

The applicants further allege an infringement of the principle of equality.

6. Sixth plea in law: need for a declaration that the contested decision is invalid in its entirety

The applicants express the view that the decision must be annulled in its entirety on the ground that, in the event of a declaration of invalidity confined exclusively to the benchmarks for sintered ore and hot metal, a fallback method would, pursuant to the rule in Article 10(2)(b) of the contested decision, in conjunction with Article 3(c) thereof, automatically become applicable for the allocation of free allowances. This, the applicants submit, would have the result of affecting them even more adversely than if the Commission's incorrect benchmark values were to be applied for sintered ore and hot metal.

(1) OJ 2011 L 130, p. 1.

(2) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32).

Action brought on 21 July 2011 — Eurofer v Commission

(Case T-381/11)

(2011/C 269/123)

Language of the case: German

Parties

Applicant: Europäischer Wirtschaftsverband der Eisen- und Stahlindustrie (Eurofer) ASBL (Luxembourg, Luxembourg) (represented by: S. Altenschmidt and C. Dittrich, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission's Decision of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (C(2011) 2772, OJ 2011 L 130, p. 1),

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

Pleas in law and main arguments

The applicant is challenging the Commission's Decision of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council. (1) It claims that that decision should be annulled in its entirety.

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

1. First plea in law, alleging infringement of the product benchmark for hot metal, in breach of Article 10a of Directive 2003/87/EC (2)

The applicant claims that the requirements for product benchmarks laid down in Annex I to the contested decision are illegal.

The applicant claims that the determination of the product benchmark for hot metal infringes Article 10a of Directive 2003/87, since the Commission failed to take account of the full carbon content which is emitted during the production of iron and steel by including their use for the production of electricity, but applied a reduction of approximately 25 %. It follows from the wording of the second sentence of the third paragraph of Article 10a(1) of Directive 2003/87, the scheme as well as the objective and the historical interpretation of the Directive that the Commission is not entitled to apply such reductions.

2. Second plea in law, alleging infringement of the obligation to state reasons laid down in the second paragraph of Article 296 TFEU

The applicant further claims that the Commission failed to provide a sufficient statement of reasons for its decision. The reasoning on the determination of the benchmarks is defective. Moreover, the Commission's reservations with regard to possible distortions of competition were not properly reasoned. This amounts to an infringement of the second paragraph of Article 296 TFEU.

3. Third plea in law, alleging breach of the principle of proportionality

   The contested decision also infringes the principle of proportionality as regards the determination of the product benchmark for hot metal.

4. Fourth plea in law, alleging breach of the principle of equal treatment

   In addition, the applicant alleges breach of the principle of equal treatment.

5. Fifth plea in law, alleging that it is necessary to annul the contested decision in its entirety

   The applicant is of the view that the contested decision should be annulled in its entirety, since annulment limited exclusively to the benchmark for hot metal would automatically lead to application of a fall-back method for the allocation of free allowances pursuant to Article 10(2)(b) in conjunction with Article 3(c) of the contested decision. This would place the applicant in an even worse position than if the Commission's incorrect benchmark values for hot metal were applied.

([1]) OJ 2011 L 130, p. 1.

([2]) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32).

Action brought on 21 July 2011 — Evonik Industries v OHIM — Bornemann (EVONIK)

(Case T-390/11)

(2011/C 269/124)

Language in which the application was lodged: German

Parties

Applicant: Evonik Industries AG (Essen, Germany) (represented by: J. Albrecht, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal: Johann Heinrich Bornemann GmbH — Geschäftsbereich Kunststofftechnik Obernkirchen (Obernkirchen, Germany)

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision (of the Second Board of Appeal) of 19 April 2011 (Case R 1802/2010-2) in so far as it denies international mark No 918 426 'EVONIK' protection within the European Union;

— order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant.

Community trade mark concerned: Word mark 'EVONIK' for goods and services in Classes 1, 2, 3, 4, 5, 6, 7, 9, 11, 16, 17, 19, 35, 37, 39, 40, 41 and 42 — International registration number 918 426.

Proprietor of the mark or sign cited in the opposition proceedings: Johann Heinrich Bornemann GmbH — Geschäftsbereich Kunststofftechnik Obernkirchen.

Mark or sign cited in opposition: Community word mark 'EVO' for goods and services in Classes 7, 37 and 42.

Decision of the Opposition Division: Opposition partially upheld.

Decision of the Board of Appeal: Appeal dismissed.

Pleas in law: Infringement of Article 8(1)(b) and Articles 75 and 76 of Regulation No 207/2009 since, (i) there is no likelihood of confusion between the opposing marks, (ii) the Board of Appeal based its decision on grounds on which the applicant could not voice its opinion, and (iii) the Board of Appeal based its decision on arguments which were not raised by the opponent in the proceedings.