

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the contested measures and order the Commission to pay the costs.

Pleas in law and main arguments

The present dispute concerns a request for the annulment of the European Commission's decision of 26 February 2013 [C(2013) 1200 final], together with the statement of objections [C(2013) 1199 final] by which the Commission had formally initiated the procedure in AT.40032 — BR/ESBR — *Recidivism*, with the intention of amending Decision C(2006) 5700 final of 29 November 2006, adopted in Case COMP/F/38.638 — *Butadiene Rubber and Emulsion Styrene Butadiene Rubber*, partially annulled and varied by the General Court of the European Union by judgments of 13 July 2011 in Case T-39/07 *Eni v Commission* and Case T-59/07 *Polimeri Europa v Commission*.

By its sole plea, the applicant alleges that the Commission lacked competence to reopen the proceedings against it with a view to the adoption of a new infringement decision. In particular, the applicant maintains that the Commission's power to impose penalties on the applicant in connection with the matters covered by the procedure in Case COMP/F/38.638 — *Butadiene Rubber and Emulsion Styrene Butadiene Rubber* was exhausted following the adoption of the decision of 29 November 2006 (C(2006) 5700 final), partially annulled and varied by the General Court of the European Union by judgments of 13 July 2011 in Case T-39/07 *Eni v Commission* and Case T-59/07 *Polimeri Europa v Commission*, currently under appeal before the Court of Justice. By reopening the procedure, the Commission intends to revise the substance of the grounds of the decision of 29 November 2006, that is to say, to undertake a new appraisal of the evidence against the applicant, which had already been established and on which the General Court had already expressed its views in the exercise of its full jurisdiction to review legality. Accordingly, the reopening of the infringement procedure, in terms of purpose and effects, is manifestly contrary to the principles of *ne bis in idem*, of legal certainty, of the protection of legitimate expectations and of effective judicial protection.

Action brought on 15 April 2013 — *Eni v Commission*

(Case T-211/13)

(2013/C 156/99)

Language of the case: Italian

Parties

Applicant: Eni SpA (Rome, Italy) (represented by: G.M. Roberti and I. Perego, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare the action admissible;

— annul the contested measures;

— order the Commission to pay the costs.

Pleas in law and main arguments

The present action contests the Commission's decision of 26 February 2013 to reopen the procedure (C(2013) 1200 final) and the statement of objections of 26 February 2013 (C(2013) 1199) relating to a proceeding pursuant to Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA Agreement, adopted in Case AT.40032-BR/ESBR.

In support of the application, Eni alleges lack of competence, arguing that the Commission cannot reopen the procedure in order to amend the decision adopted in Case BR-ESBR in 2006 and, at the same time, to adopt a decision re-imposing the increase in the fine for repeated infringements.

Eni submits that in the judgment of 13 July 2011 (Case T-39/07), in addition to annulling in part the 2006 BR-ESBR decision on the basis that the Commission had failed to make a correct assessment of the aggravating circumstance of repeated infringement, the General Court exercised its jurisdiction in relation to the merits — under Article 261 TFEU and Article 31 of Regulation No 1/2003 — by re-determining the amount of the fine and substituting its own assessment for that made by the Commission. In addition to being in breach of those findings, the contested measures are also contrary to Article 266 TFEU, to the principle governing the attribution of powers and ensuring institutional balance, referred to in Article 13 TFEU, as well as to the fundamental right to fair legal process laid down in Article 6 ECHR and Article 47 of the Charter of Fundamental Rights and to the *ne bis in idem* principle laid down in Article 7 ECHR.

Eni also claims that, contrary to the assertions made by the Commission, the General Court did not merely find that there had been a procedural defect in the Commission's application of the concept of repeated infringement in the 2006 BR-ESBR decision; the Commission's action is therefore based on a wholly erroneous legal and factual premiss and, from that point of view, too, is contrary to Article 7 ECHR.