



Reports of Cases

Case T-140/15

Aurora Srl

v

Community Plant Variety Office

(Plant varieties — Nullity proceedings — Sugar beet variety M 02205 — Article 20(1)(a) of Regulation (EC) No 2100/94 — Article 7 of Regulation No 2100/94 — Distinctness of the candidate variety — Technical examination — Procedure before the Board of Appeal — Obligation to analyse carefully and impartially all the elements relevant to the present case — Power to alter)

Summary — Judgment of the General Court (Fifth Chamber), 23 November 2017

1. *Judicial proceedings — Application initiating proceedings — Formal requirements — Brief summary of the pleas in law on which the application is based — Requirement for an express reference to the provisions on which the action is based — None — Error in the identification of the provisions — Irrelevant to the admissibility of the action*

(Statute of the Court of Justice, Arts 21, first para., and 53, first para.; Rules of Procedure of the General Court, Art. 76(d))

2. *Agriculture — Uniform legislation — Protection of plant varieties — Declaration annulling a right improperly granted — Discretion of the Community Plant Variety Office — Re-examination of the protected variety — Conditions — Serious doubts as to the legality of the grant of the right — Burden of proof*

(Council Regulation No 2100/94, Arts 7, 10, 20, 54 and 55)

3. *Agriculture — Uniform legislation — Protection of plant varieties — Technical examination — Discretion of the Community Plant Variety Office — Scope — Limits*

(Council Regulation No 2100/94, Arts 7(1) and 56(2))

4. *Agriculture — Uniform legislation — Protection of plant varieties — Appeals procedure — Appeal brought against a decision of the Community Plant Variety Office and referred to the Board of Appeal — Examination of the facts by the CPVO of its own motion — Obligation to examine carefully and impartially all the relevant aspects — Scope*

(Charter of Fundamental Rights of the European Union, Art. 41(1); Council Regulation No 2100/94, Art. 76; Commission Regulation No 874/2009, Art. 51)

5. *Agriculture — Uniform legislation — Protection of plant varieties — Appeals procedure — Action before the EU judicature — Ambit of the review — Assessment of the legality by reference to the information available at the time of adoption of the decision*

(Council Regulation No 2100/94)

6. *Agriculture — Uniform legislation — Protection of plant varieties — Appeals procedure — Action before the EU judicature — Power of the General Court to alter the contested decision — Limits*

(Council Regulation No 2100/94, Art. 73(3))

1. A party is not required to indicate expressly the provisions on which its pleas are based. It is sufficient for the subject matter of that party's application and the main points of fact and law on which it is based to be set out sufficiently clearly in the application. That applies, *mutatis mutandis*, where there is an error in the identification of the provisions on which the pleas in law of an action are based.

(see para. 38)

2. The Community Plant Variety Office has a broad discretion concerning the declaration of nullity of a plant variety right for the purposes of Article 20 of Regulation No 2100/94 on Community plant variety rights. Therefore, only where there are serious doubts that the conditions laid down in Articles 7 or 10 of that regulation are met on the date of the examination provided for under Articles 54 and 55 of that regulation can a re-examination of the protected variety by way of nullity proceedings under Article 20 of Regulation No 2100/94 be justified. In that context, a third party seeking a declaration of nullity of a plant variety right must adduce evidence and facts of sufficient substance to raise serious doubts as to the legality of the plant variety right following the examination provided for in Articles 54 and 55 of that regulation.

(see paras 57, 58)

3. See the text of the decision.

(see paras 62, 70)

4. Under Article 51 of Regulation No 874/2009 laying down implementing rules for the application of Regulation No 2100/94 as regards proceedings before the Community Plant Variety Office (CPVO), the provisions relating to proceedings before that Office apply *mutatis mutandis* to appeal proceedings. Thus, on the one hand, the principle of examination of the facts, set out in Article 76 of Regulation No 2100/94 on Community plant variety rights, by the CPVO of its own motion also applies in proceedings before the Board of Appeal of the CPVO. On the other hand, the Board of Appeal is also bound by the principle of sound administration, pursuant to which it is required to examine carefully and impartially all the relevant factual and legal information in the case before it.

Consequently, before a claim that the distinctness of a candidate variety is established on the basis of data relating to the reference variety from its official description and not on the basis of results obtained following comparative growing trials, the Board of Appeal is required to use its broad investigative powers, under Article 76 of Regulation No 2100/94, to verify the source of the notes of expression of reference variety in the last and penultimate versions of the comparative distinctness report and draw the appropriate conclusions. In fact, in accordance with the principle of sound administration, laid down in Article 41(1) of the Charter of Fundamental Rights, the Board of Appeal is required to examine carefully and impartially all the relevant particulars with a view to assessing the validity of the Community plant variety right at issue and to gather all the factual and legal information necessary to exercise that discretion.

(see paras 72-74, 76, 77)

5. See the text of the decision.

(see para. 83)

6. The EU court's power to alter decisions of the Board of Appeal of the Community Plants Variety Office (CPVO) does not have the effect of conferring on it the power to substitute its own assessment for that of a Board of Appeal of the CPVO, or to carry out an assessment on which that Board of Appeal has not yet adopted a position. Exercise of the power to alter decisions must therefore, in principle, be limited to situations in which the EU court, after reviewing the assessment made by the Board of Appeal, is in a position to determine, on the basis of the matters of fact and of law as established, what decision the Board of Appeal was required to take.

(see paras 90, 91)