



Reports of Cases

ORDER OF THE GENERAL COURT (First Chamber)

8 April 2019*

(REACH — Representation by a lawyer who is not a third party — Manifest inadmissibility)

In Case T-481/18,

Electroquímica Onubense, SL, established in Palos de la frontera (Spain), represented by D. González Blanco, lawyer,

applicant,

v

European Chemicals Agency (ECHA), represented by J.-P. Trnka, C.-M. Bergerat and M. Heikkilä, acting as Agents, assisted by C. García Molyneux, lawyer,

defendant,

ACTION for annulment of ECHA's Decision SME D(2018)2931-DC of 31 May 2018, finding that the applicant does not fulfil the conditions to receive a reduction of the fee for small enterprises and imposing an administrative charge on it,

THE GENERAL COURT (First Chamber),

composed of I. Pelikánová, President, P. Nihoul (Rapporteur) and J. Svenningsen, Judges,

Registrar: E. Coulon,

makes the following

Order

Facts and proceedings

- 1 The present action was brought on 1 August 2018, on behalf of the applicant, Electroquímica Onubense, SL, by Daniel González Blanco.
- 2 In its defence of 29 November 2018, the European Chemicals Agency (ECHA) has raised a plea of inadmissibility alleging that the lawyer representing the applicant did not appear to meet the standard of independence required under the Statute of the Court of Justice of the European Union and the

* Language of the case: Spanish.

Rules of Procedure of the General Court. ECHA based its allegation on the fact that, in the application, the contact details provided by the applicant's lawyer included an e-mail address containing the domain name of the applicant.

- 3 By a measure of organisation of procedure based on Article 89(3) of the Rules of Procedure, the applicant was asked to submit observations regarding the admissibility of the action, in the light of the plea of inadmissibility raised by ECHA, by specifying whether its representative had, at the time the action was lodged, any involvement in the applicant company or in any other related company and, if so, by explaining his role in the administrative and financial management of that company. The applicant complied with that request within the period prescribed.

Forms of order sought

- 4 The applicant claims that the Court should:
- acknowledge that the action for annulment of ECHA's Decision SME D(2018)2931-DC of 31 May 2018, finding that the applicant does not fulfil the conditions to receive a reduction of the fee for small enterprises and imposing an administrative charge on it, was lodged in due time and in the appropriate form;
 - in view of the pleas raised, declare that the applicant constitutes a medium-sized enterprise for the purposes of applying Commission Regulation (EC) No 340/2008 of 16 April 2008 on the fees and charges payable to the ECHA pursuant to Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) (OJ 2008 L 107, p. 6);
- 5 ECHA contends that the Court should:
- adopt a measure of inquiry requesting that the applicant furnish employment records, or other similar official documents from the social security agency of the Spanish Government, establishing the professional status of its lawyer;
 - declare the action inadmissible;
 - in the alternative, dismiss the action as unfounded;
 - order the applicant to pay the costs.
- 6 In its response to the written questions put by the Court, the applicant claims that the Court should declare the action admissible.

Law

- 7 Under Article 126 of the Rules of Procedure, where an action is manifestly inadmissible, the Court may, on a proposal from the Judge-Rapporteur, at any time decide to give a decision by reasoned order without taking further steps in the proceedings.
- 8 In the present case, the Court, considering that it has sufficient information from the documents in the file, has decided to give a decision without taking further steps in the proceedings.

- 9 In accordance with the third and fourth paragraphs of Article 19 and the first paragraph of Article 21 of the Statute of the Court of Justice of the European Union, applicable to the General Court by virtue of the first paragraph of Article 53 of that Statute, parties other than the Member States, the institutions of the European Union, the States which are parties to the Agreement on the European Economic Area (EEA) and the Surveillance Authority of the European Free Trade Association (EFTA), which is covered by that Agreement, must be represented by a lawyer authorised to practise before a court of a Member State or of another State which is a party to the EEA.
- 10 According to the case-law, it is apparent from the provisions cited above, and in particular from the use of the term ‘represented’ in the third paragraph of Article 19 of the Statute of the Court of Justice, that, in order to bring an action before the General Court, ‘a party’, within the meaning of that article, must use the services of ‘a third party’ authorised to practise before a court of a Member State or of a State which is a party to the EEA Agreement (see order of 18 November 2014, *Justice & Environment v Commission*, T-221/14, not published, EU:T:2014:1002, paragraph 8 and the case-law cited).
- 11 The requirement to have recourse to a third party is based on a conception of the lawyer’s role as collaborating in the administration of justice and as being required to provide, in full independence and in the overriding interests of justice, such legal assistance as his client needs (see order of 18 November 2014, *Justice & Environment v Commission*, T-221/14, not published, EU:T:2014:1002, paragraph 9 and the case-law cited).
- 12 The concept of the independence of lawyers before the Courts of the European Union is determined not only positively, that is by reference to professional ethical obligations, but also negatively, that is to say, by the absence of an employment relationship (see judgment of 6 September 2012, *Prezes Urzędu Komunikacji Elektronicznej v Commission*, C-422/11 P and C-423/11 P, EU:C:2012:553, paragraph 24 and the case-law cited).
- 13 In the present case, the applicant states, in its response to the written questions put by the Court, that Mr González Blanco has been an employee of the applicant since 15 February 2017, holding the post of human resources director.
- 14 In accordance with the case-law cited in paragraph 12 above, such an employment relationship, under which the applicant determines whether its representative is to be employed by the company, the applicable working conditions and whether to terminate the employment relationship, precludes the representative from meeting the requisite standard of independence.
- 15 In those circumstances, given that he holds the position of human resources director of the applicant, as an employee of that company, Mr González Blanco cannot be regarded as a third party independent of the applicant. There is a risk that, on account of his position, the professional opinion of Mr González Blanco would be, at least partly, influenced by his working environment and that he would necessarily therefore have a lesser degree of independence vis-à-vis the applicant than an external lawyer has vis-à-vis his clients (see, to that effect, order of 14 November 2016, *Dimos Athinaion v Commission*, T-360/16, not published, EU:T:2016:694, paragraph 10 and the case-law cited).
- 16 Those considerations are not called into question by the applicant’s arguments.
- 17 In the first place, the applicant argues that its representative is authorised to practise before the courts of a Member State and that its representative lodged an authorisation to act on its behalf in the present proceedings.

- 18 In that respect, it should be noted that the fact that Mr González Blanco is authorised to practise before a court of a Member State or of a State party to the EEA Agreement satisfies a prerequisite for acting before the Courts of the European Union. However, according to the case-law, such an authorisation is not sufficient (order of 18 November 2014, *Justice & Environment v Commission*, T-221/14, not published, EU:T:2014:1002, paragraph 8). Thus, it cannot be inferred from the fact that Mr González Blanco is authorised to practise before national courts that he is automatically allowed to represent the applicant before the General Court. The fact that the applicant lodged, in accordance with Article 51(3) of the Rules of Procedure, an authorisation for its representative to act on its behalf in the present proceedings is irrelevant for the purpose of assessing the separate requirement that such a representative must be a third party vis-à-vis the applicant.
- 19 In the second place, the applicant argues that, in Spain, being employed as a human resources director is compatible with practising law as a liberal profession, which Mr González Blanco does in his own name, and thus, independently and autonomously.
- 20 In that respect, it should be noted that the conception of a lawyer's role defined in paragraph 11 above reflects legal traditions common to the Member States. Nevertheless, that conception is implemented objectively in the context of disputes brought before the Courts of the European Union and such implementation is necessarily independent of the national legal orders (see order of 20 November 2017, *BikeWorld v Commission*, T-702/15, EU:T:2017:834, paragraph 32 and the case-law cited).
- 21 In accordance with that case-law, provisions concerning the representation of parties other than the Member States and the institutions before the Courts of the European Union must be interpreted, as far as possible, independently and without reference to national law.
- 22 Thus, the fact that, in Spain, practising law as a liberal profession is compatible with the position held in the present case by the representative of the applicant, as an employee of the applicant, is not in itself sufficient to demonstrate that the requirement of independence is satisfied, since that requirement must be assessed in the light of the criteria set out in paragraphs 10 to 12 above.
- 23 In the third place, the applicant claims that Mr González Blanco is acting as its representative in the present proceedings as an autonomous professional, on an independent basis, and not as an employee.
- 24 In the present case, that argument must be rejected. Given that Mr González Blanco is an employee of the applicant, that employment relationship would not allow him, in the context of disputes brought before the Courts of the European Union and for the reasons set out in paragraph 12 above, to rely on the fact that he would be acting solely in his capacity as a lawyer, possibly under self-employed status, rather than as an employee of the applicant.
- 25 For the above reasons, it must be held that, in so far as the application was signed by Mr González Blanco, the present action was not brought in accordance with Article 19, third and fourth paragraphs, and Article 21, first paragraph, of the Statute of the Court of Justice of the European Union, applicable to the General Court by virtue of the first paragraph of Article 53 of that Statute.
- 26 It follows from the foregoing that, in the present case, the action must be dismissed as manifestly inadmissible, without it being necessary to adopt the measure of inquiry requested by ECHA.

Costs

- 27 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

- 28 Since the applicant has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by ECHA.

On those grounds,

THE GENERAL COURT (First Chamber),

hereby orders:

- 1. The action is dismissed as manifestly inadmissible.**
- 2. Electroquímica Onubense, SL is to pay the costs.**

Luxembourg, 8 April 2019.

E. Coulon
Registrar

I. Pelikánová
President