

Pleas in law and main arguments

In support of the action against the Commission's decision of 21 August 2019 imposing on him the disciplinary penalty of termination without notice of his employment contract, the applicant relies on three pleas in law.

1. First plea in law, alleging infringement of the principle of good administration and the duty to state reasons. In that respect the applicant claims, inter alia, that he was not treated fairly by the Commission which did not comply with its obligation for due diligence or its duty of care. In the applicant's submission, the Commission should have obtained information about the outcome of the criminal proceedings which concluded with the proceedings being discontinued and passed that outcome on to the Disciplinary Board in order for the board to take it into account in its decision.
2. Second plea in law, alleging the unlawfulness of the preparatory measures taken for the contested decision and manifest errors of assessment committed by the Commission. The applicant submits, inter alia, that the unlawfulness of both preparatory measures taken for the contested decision renders that decision unlawful.
3. Third plea in law, alleging infringement of Article 10 of Annex X to the Staff Regulations of Officials of the European Union on the ground that, first, all of the specific circumstances of the applicant's file were not examined and, secondly, the criteria used to determine the penalty were assessed incorrectly or given disproportionate weight.

Action brought on 20 February 2020 — Sciessent v Commission

(Case T-122/20)

(2020/C 129/28)

Language of the case: English

Parties

Applicant: Sciessent LLC (Beverly, Massachusetts, United States) (represented by: K. Van Maldegem and P. Sellar, lawyers, and V. McElwee, Solicitor)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul Commission Implementing Decision (EU) 2019/1960 of 26 November 2019 not approving silver zeolite as an existing active substance for use in biocidal products product-types 2 and 7 ⁽¹⁾;
- order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of a rule of law relating to the application of the Treaties and of Articles 4 and 19 of Regulation (EU) No 528/2012 ⁽²⁾.
 - The defendant, relying upon the Biocidal Products Committee (BPC) opinions on the approval of the active substance silver zeolite for product-types 2 and 7, reached the conclusions that the substance could not be approved on the grounds that sufficient efficacy had not been demonstrated. However, in the applicant's view, the efficacy assessment was wrongly undertaken by reference to the article in which silver zeolite is used. The efficacy of the substance, silver zeolite, has been demonstrated by the applicant in accordance with the applicable law. The defendant, in its evaluation of, and conclusion on, the efficacy of the substance, has misinterpreted and misapplied the relevant law.
2. Second plea in law, alleging lack of competence — infringement of Article 290 TFEU and Articles 4 and 19 of Regulation (EU) No 528/2012.

- The reason for the non-approval of silver zeolite under the contested act is the alleged insufficient efficacy of the treated article in which it is used. However, the applicant maintains that the only criteria that the defendant could lawfully take into account are limited to those listed in Articles 4 and 19 of Regulation (EU) No 528/2012. Those criteria do not include the efficacy of the treated article whose assessment is otherwise left to the secondary, subsequent stage of biocidal product authorisation at the Member State level. In light of the fact that precisely that assessment has been undertaken by the defendant to justify the non-approval of silver zeolite, meaning that the defendant has gone far beyond what it is delegated to do under Regulation (EU) No 528/2012, the defendant breached Article 290 of the Treaties and Articles 4 and 19 of that Regulation.
3. Third plea in law, alleging infringement of a rule of law relating to the application of the Treaties — principle of non-discrimination.]
- The applicant's substance has been treated differently from other substances used for the same product-types 2 and 7, without the defendant justifying objectively why silver zeolite should be treated any differently from the other substances, which were all subject to the same rules of assessment under Regulation (EU) No 528/2012 (and Directive 98/8/EC⁽³⁾) for the same product-types.
4. Fourth plea in law, alleging infringement of a rule of law relating to the application of the Treaties — principle of legal certainty.
- The defendant issued an open letter to the Chair of the BPC, which was designed to set straight how the law on efficacy assessment and treated articles under Regulation (EU) No 528/2012 was to be interpreted and applied. Whilst the law was clear, that letter reconfirmed that requiring the demonstration of the benefits of the treated articles does not fall within the scope of Regulation (EU) No 528/2012. The applicant relied upon the content of that letter, which confirmed the clarity of the law, and had legitimate expectations regarding the approval of the substance. As a result, the contested act appears to have infringed the principles of legitimate expectation and legal certainty

⁽¹⁾ OJ 2019 L 306, p. 42

⁽²⁾ Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products (OJ 2012 L 167, p. 1).

⁽³⁾ Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market (OJ 1998 L 123, p. 1).

Action brought on 27 February 2020 — Autoridad Portuaria de Bilbao v Commission

(Case T-126/20)

(2020/C 129/29)

Language of the case: Spanish

Parties

Applicant: Autoridad Portuaria de Bilbao (Spain) (represented by: D. Sarmiento Ramírez-Escudero and X. Codina García-Andrade, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

- as its main claim, declare the contested decision null and void;