

The applicant contacted the CJEU with an application for annulment of the 3 block exemption Regulations on the grounds that they infringed the Treaties and the Charter. The CJEU in both instances dismissed the applicant's application for annulment of the block exemption Regulations as manifestly inadmissible. The reason for the dismissal was the failure to comply with the objective two-month time limit set by Article 263 TFEU. The CJEU did not in any way address the merits of the case and in a purely formalistic manner applied the time limit for the submission of the application. The applicant meanwhile argued that the fact that the Commission's control mechanism did not function properly was revealed only on the basis of the Commission's answer to the applicant's complaint. In the application, the applicant stated that he took the view that the limitation period started to run from the Commission's reply refusing to address in detail his complaint.

Action brought on 20 February 2020 — Sciessent v Commission

(Case T-123/20)

(2020/C 161/56)

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) 2019/1973 of 27 November 2019 not approving silver copper 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 copper 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 unlawfully conducted by reference to a treated article. It is alleged that the defendant, in its evaluation of, and conclusion on, the efficacy of the substance, has misinterpreted and misapplied the relevant law, when considering the efficacy of silver copper zeolite.
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 copper 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 copper 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 copper zeolite should be treated any differently from those 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. The applicant relied upon the content of this letter, which confirmed the clarity of the law, and had legitimate expectations regarding the approval of the substance. As a result, the contested act infringed the principles of legitimate expectation and legal certainty.

⁽¹⁾ OJ 2019 L 307, p. 58.

⁽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 — IR v Commission

(Case T-131/20)

(2020/C 161/57)

Language of the case: English

Parties

Applicant: IR (represented by: S. Pappas and A. Pappas, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul the decision of the Director General for Employment, Social Affairs and Inclusion contained in the e-mail of 2 July 2019 of the competent HR business correspondent by which the request of the European Centre for the Development of Vocational Training (Cedefop) for the third renewal of the secondment of the applicant was rejected;
- annul the decision of 23 January 2020 of the Appointing Authority rejecting the complaint submitted by the applicant under Article 90(2) of the Staff Regulations;
- 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 the irregularity of the pre-litigation procedure, which did not lead to a proper review by the Appointing Authority of the contested decision of 2 July 2019.