

5. Fifth plea in law, alleging infringement of Directive 2003/87/EC

- The applicant claims that Directive 2003/87/EC has been infringed by the Commission's misinterpretation of the so-called biomass exception (point 1 of Annex I). First, in the Commission's assessment as to whether the applicant was using biomass exclusively, it used data dating back several years instead of newer or prospective data. Second, the Commission's interpretation of the biomass exception manifestly runs counter to both the other provisions of the directive, in particular Article 10a, and the aim of the directive and the principles of equal treatment and proportionality. The aim of the directive in general and of the rules on the free allocation of emission allowances in particular is to create a financial incentive to reduce the use of fossil fuels, including through the increased use of biomass. The Commission's interpretation of the biomass exception has precisely the opposite effect.

6. Sixth plea in law, alleging inapplicability under Article 277 TFEU of the biomass exception in so far as it relates to the applicant

- In the event that the Court does not consider that the biomass exception can be interpreted as set out in the fifth plea in law, the applicant claims that point 1 of Annex I to Directive 2003/87/EC (the biomass exception), in accordance with Article 277 TFEU, should not be applied in the present case. This is because that provision — were the Commission's interpretation of it to be accepted — runs counter to primary law, including the principles of equal treatment and proportionality. That provision disadvantages those who have gone the furthest in the transition to fossil-free emissions in favour of the others. It therefore incentivises those who have done the most to start using fossil fuels again, and encourages those who still use fossil fuels not to reduce their emissions beyond a certain level.

Action brought on 27 May 2021 — CNH Industrial v EUIPO (SOILXPLORER)

(Case T-300/21)

(2021/C 297/57)

Language of the case: English

Parties

Applicant: CNH Industrial NV (Amsterdam, Netherlands) (represented by: L. Axel Karnøe Søndergaard, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for European Union word mark SOILXPLORER — Application for registration No 18 217 454

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 26 March 2021 in Case R 386/2021-5

Form of order sought

The applicant claims that the Court should:

- annul the contested decision in its entirety and allow the trade mark to be published for opposition purposes in respect of all the goods applied for, or, in the alternative, refer the case back to the EUIPO in order that it may adopt the consequent measures;
- order EUIPO to pay the costs incurred by the applicant.

Pleas in law

- Infringement of Article 7(1)(c) of Regulation (EU) 2017/1001 of the European Parliament and of the Council by attributing an incorrect meaning to the trade mark applied for and by failing to consider the mark as filed;

- Infringement of Article 7(1)(c) of Regulation (EU) 2017/1001 of the European Parliament and of the Council by incorrectly assessing the descriptive character of the mark;
- Infringement of Article 7(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council by incorrectly assessing the distinctive character of the mark.

Action brought on 27 May 2021 — CNH Industrial v EUIPO (CROPXPLORER)

(Case T-301/21)

(2021/C 297/58)

Language of the case: English

Parties

Applicant: CNH Industrial NV (Amsterdam, Netherlands) (represented by: L. Axel Karnøe Søndergaard, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for European Union word mark CROPXPLORER — Application for registration No 18 217 458

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 26 March 2021 in Case R 387/2021-5

Form of order sought

The applicant claims that the Court should:

- annul the contested decision in its entirety and allow the trade mark to be published for opposition purposes in respect of all the goods applied for, or, in the alternative, refer the case back to the EUIPO in order that it may adopt the consequent measures;
- order EUIPO to pay the costs incurred by the applicant.

Pleas in law

- Infringement of Article 7(1)(c) of Regulation (EU) 2017/1001 of the European Parliament and of the Council by attributing an incorrect meaning to the trade mark applied for and by failing to consider the mark as filed;
- Infringement of Article 7(1)(c) of Regulation (EU) 2017/1001 of the European Parliament and of the Council by incorrectly assessing the descriptive character of the mark;
- Infringement of Article 7(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council by incorrectly assessing the distinctive character of the mark.

Action brought on 8 June 2021 — KF v BEI

(Case T-318/21)

(2021/C 297/59)

Language of the case: English

Parties

Applicant: KF (represented by: L. Levi and A. Blot, lawyers)

Defendant: European Investment Bank