

4. Fourth plea, alleging infringement of Regulation No 347/2013 of the European Parliament and of the Council of 17 April 2013.

— The applicant claims in that regard that an appropriate cost-benefit analysis was never carried out.

(¹) Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13).

(²) Regulation (EU) 2021/1767 of the European Parliament and of the Council of 6 October 2021 amending Regulation (EC) No 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2021 L 356, p. 1).

Action brought on 17 February 2022 — Hahn Rechtsanwälte v Commission

(Case T-87/22)

(2022/C 165/46)

Language of the case: German

Parties

Applicant: Hahn Rechtsanwälte PartG mbB (Bremen, Germany) (represented by: K. Künstner, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the European Commission's decision C(2021) 9326 final of 7 December 2021;

— order the European Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging no grounds for refusal under Article 4(2) of Regulation (EC) No 1049/2001 (¹)

— The Commission failed to set out any commercial reasons worthy of protection with regard to the parties to cartel proceedings AT.40178 — Car Emissions, within the meaning of Article 4(2) of Regulation (EC) No 1049/2001 and failed to carry out a case-by-case examination.

— The Commission cannot rely on the protection of investigations, in view of the fact that this case concerns a closed cartel investigation with a decision that has become final and the Commission also failed to carry out a case-by-case examination.

— The Commission relies on the general presumption of non-disclosure, despite the fact that the conditions provided for in the first and/or third indent of Article 4(2) of Regulation (EC) No 1049/2001 are not met which leads to an inadmissible distortion of the 'rule-exception relationship' of the right of access.

2. Second plea in law, alleging overriding public interest in disclosure within the meaning of Article 4(2) of Regulation (EC) No 1049/2001

— The Commission erred in not finding that there was an overriding public interest within the meaning of Article 4(2) of Regulation (EC) No 1049/2001.

— In the present case, a failure to have regard for interests of public welfare is evident, since the arrangements contrary to cartel law also concern the defeat devices of passenger cars and excessive nitrogen oxide emissions have a negative impact on interests of public welfare such as health, the environment and climate.

- According to the findings of the European Environment Agency (EEA), approximately 12 800 people die each year in Germany alone from air pollution caused by nitrogen oxide.
- 3. Third plea in law, alleging lack of a specific examination of partial access pursuant to Article 4(2) of Regulation (EC) No 1049/2001
 - The Commission did not examine in a sufficiently specific manner whether, in the alternative, partial access to the files should be granted pursuant to Article 4(2) of Regulation (EC) No 1049/2001.
 - No examination as to whether it might be possible to adopt a less restrictive measure concerning the applicant's right of access took place.

⁽¹⁾ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

Action brought on 21 February 2022 — OG and Others v Commission

(Case T-101/22)

(2022/C 165/47)

Language of the case: Spanish

Parties

Applicants: OG, OH, OI and OJ (represented by: D. Gómez Fernández, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

- annul Article 1 of Commission Delegated Regulation (EU) 2021/2288 ⁽¹⁾ of 21 December 2021 amending the Annex to Regulation (EU) 2021/953 ⁽²⁾ of the European Parliament and of the Council as regards the acceptance period of vaccination certificates issued in the EU Digital COVID Certificate format indicating the completion of the primary vaccination series;
- order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicants rely on seven pleas in law.

1. First plea in law, alleging infringement of the rules of jurisdiction and Article 290(1) TFEU.
 - In that respect, the applicants claim that the Commission has acted in excess of its authority as regards the delegation mandate given by the European Parliament in Articles 12 and 5(2) of Regulation 2021/953 and those articles themselves in so far as the contested act does not comply with the essential elements of the enabling act and does not, in any case, fall within the regulatory framework defined in the basic legislative act since the changes are not necessary in the event of scientific progress in containing the COVID-19 pandemic.
2. Second plea in law, alleging infringement of the rules of jurisdiction and Article 290(1) TFEU.
 - In that respect, the applicants claim that the Commission has acted in excess of its authority as regards the delegation mandate given by the European Parliament in Articles 32 and 5(4) of Regulation 2021/953 and those articles themselves. Infringement of essential procedural requirements in so far as the urgency procedure was followed in the absence of the specific scenario required for use of that procedure, namely the availability of new scientific evidence and the existence of imperative grounds of urgency.
3. Third plea in law, alleging infringement of the fundamental right of free movement enshrined in Article 21 TFEU, Article 45 of the Charter of Fundamental Rights of the European Union, Article 2 of Protocol No.4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Article 27 of Directive 2004/38/EC of 29 April and the principle of proportionality.