

Action brought on 16 September 2022 — Robin Wood and Others v Commission

(Case T-575/22)

(2022/C 482/30)

*Language of the case: English***Parties**

Applicants: Robin Wood — Gewaltfreie Aktionsgemeinschaft für Natur und Umwelt eV (Hamburg, Germany) and 6 others (represented by: C. Baldon, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

- annul the Commission's decision under reference Ares(2022)4939323 dated 6 July 2022 by which the Commission rejected the request for internal review dated 3 February 2022 brought by the applicants pursuant to Article 10 of the Aarhus Regulation;
- order the Commission to bear the costs of the proceedings.

Pleas in law and main arguments

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

1. In relation to 'forestry activities' the applicants rely on six pleas in law, alleging that the contested Decision is vitiated by:
 - errors of law and manifest errors of assessment in relation to the criteria for determining when an activity makes a substantial contribution to climate change mitigation;
 - errors of law and manifest errors of assessment in relation to the exemption from climate benefit analysis for forest holdings under 13 ha in the criteria for substantial contribution to climate change mitigation;
 - errors of law and manifest errors of assessment in relation to the criteria for determining when an activity does no significant harm to climate change adaptation;
 - errors of law in relation to the criteria for determining when an activity does no significant harm to the transition to a circular economy;
 - errors of law in relation to the criteria for determining when an activity does no significant harm to climate change mitigation;
 - errors of law and manifest errors of assessment in relation to the criteria for determining when an activity does no significant harm to the protection and restoration of biodiversity and ecosystems.
2. In relation to 'forest bioenergy activities', the applicants rely on six pleas in law, alleging that the contested Decision is vitiated by:
 - manifest errors of assessment in holding that the 'substantial contribution to climate change mitigation' criteria are adequate for determining that an activity makes a substantial contribution to climate change mitigation;
 - errors in law as regards the standards for establishing the technical screening criteria;
 - manifest errors of assessment in considering that the 'substantial contribution to climate change mitigation' criteria for forest bioenergy activities are based on conclusive scientific evidence and the precautionary principle;

- manifest errors of assessment in determining that the ‘do no significant harm’ criteria for forest bioenergy activities ensure that these activities do no significant harm to the other environmental objectives of Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 ⁽¹⁾;
- errors in law and manifest errors of assessment as regards the criteria in relation to substantial contribution to climate change adaptation;
- errors in law and assessment in the application of the Paris Agreement and the United Nations Framework Convention on Climate Change.

⁽¹⁾ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ 2020 L 198, p. 13).

Action brought on 23 September 2022 — RH and Others v Commission

(Case T-596/22)

(2022/C 482/31)

Language of the case: English

Parties

Applicants: RH, RI, RJ, RK, RL (represented by: P. Holtrop, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

- annul Commission Decision of 8 June 2022, C (2022) 3942 final, State aid SA. 102454 (2022/N) — Spain and SA. 102569 (2022/N) — Portugal — concerning the production cost adjustment mechanism for the reduction of the electricity wholesale price in the Iberian market,
- order the Commission to pay the costs of proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission has committed an error in fact: and has failed to appreciate the functioning of the national state aid measure.

The Commission did not properly understand the functioning of the measure in the *Real Decreto-Ley 10/2022*. ⁽¹⁾ In the Commission’s analysis in the contested Decision, it is not clear that the Commission is aware that the exemption for hedged electricity supplies does not cover all of the possible hedges, since in some paragraphs it refers to it applying to wholesale market participants while in other it is considered to affect any hedge. This results in the Commission not taking into account the position of the applicants and, wrongly, concluding that the state aid scheme complies with EU law.

2. Second plea in law, alleging that the measure in the *Real Decreto-Ley 10/2022* is not appropriate nor proportionate:
 - although the state aid mechanism is well targeted to achieve its objective other less disruptive means to accomplish its goal could have been used that would not have impacted negatively the applicants’ position in the market;
 - also, they would have prevented disruptions that are a consequence of the aid scheme, such as putting the applicants at a disadvantage to market competitors with different energy supply structures or the possibility of allocating a windfall profit to a company, with whom the applicants have hedged part of their electricity consumption, and their clients.