

Operative part of the order

1. The application for interim measures is dismissed.
2. The order of 14 October 2022, *Westpole Belgium and Unisys Belgium v Parliament* (T-640/22 R), is set aside.
3. The costs are reserved.

Action brought on 2 December 2022 — Electrawinds Shabla South EAD v Council**(Case T-759/22)**

(2023/C 71/43)

*Language of the case: Bulgarian***Parties***Applicant:* Electrawinds Shabla South EAD (Sofia, Bulgaria) (represented by: M. Grozdev, lawyer)*Defendant:* Council of the European Union**Form of order sought**

The applicant claims that the Court should:

- annul Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices (OJ L 261, 2022, p. 1);
- annul that regulation in part, in so far as it sets a mandatory cap on producers' market revenues, obtained from the generation of electricity from the sources referred to in Article 7(1), and in so far as it gives each Member State the power to seize (nationalise) for the benefit of the State the 'surplus revenues' of those producers (as defined in Article 2 (9) of the Regulation);
- order the Council 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 lack of competence

Council Regulation (EU) 2022/1854 of 6 October 2022 was adopted in breach of EU law, on account of a lack of competence on the part of the Council. Article 122 TFEU establishes the Council's competence for emergency intervention in the energy sector, but that Treaty provision has a very limited scope of application and the intervention measures provided for in the regulation go beyond that scope Pursuant to Article 122(1) TFEU, the Council of the European Union may decide upon the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy. Article 122 TFEU therefore does not establish any legislative power for the Council of the European Union to adopt energy crisis management measures, but only a power to intervene in the event of severe difficulties in the supply of certain products, including energy.

2. Second plea in law, alleging failure to observe the principle of proportionality

Council Regulation (EU) 2022/1854 of 6 October 2022 infringes the principle of proportionality. Article 122 TFEU allows only 'appropriate' measures, and the introduction of a mandatory cap on producers' market revenues is not an 'appropriate' measure, since it does not relate directly to the formation of energy prices. Prices will remain and will evolve as they always have, with or without imposing revenue caps. Furthermore, the demand for electricity and natural gas will not change by introducing revenue caps and market revenue taxes..

3. Third plea in law, alleging infringement of the right to property

The measures introduced by the regulation are not proportionate in so far as the mandatory cap on market revenues imposed on renewable energy producers, as provided for in the regulation, and the powers given to each Member State to seize (nationalise) for the benefit of the State the 'surplus revenues' of those producers infringe the fundamental right to property. The application of Article 122(1) of the Treaty on the Functioning of the European Union (TFEU) constitutes one of the aspects of the Community's public interest. Consequently, pursuant to that article, the exercise of the right to property may be restricted, provided that the cap on market revenues, imposed on renewable energy producers, and seizure for the benefit of the State of 'surplus revenues', introduced by Council Regulation (EU) 2022/1854, are not disproportionate and do not impair the very substance of that right.

Action brought on 12 December 2022 — Penguin Random House v EUIPO — Ediciones Literarias Independientes (PLAN B)

(Case T-777/22)

(2023/C 71/44)

Language in which the application was lodged: Spanish

Parties

Applicant: Penguin Random House Grupo Editorial, SAU (Barcelona, Spain) (represented by: E. Armijo Chávarri, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Ediciones Literarias Independientes, SL (Barcelona)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: figurative mark PLAN B — EU trade mark No 17 887 136

Proceedings before EUIPO: Cancellation proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 28 September 2022 in Case R 2015/2021-1

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- in the alternative, annul the contested decision in respect of the goods in Classes 9 and 16 not covered by the Spanish mark PLAN B (mixed) No. 3 641 418 and covered by the contested EU mark;
- order EUIPO to pay the costs.

Plea in law

Infringement of Article 59(1)(b) of Regulation (EU) 2017/1001 of the Parliament and of the Council.
