Reports of Cases

JUDGMENT OF THE GENERAL COURT (Third Chamber)

17 April 2024*

(Plant varieties – Grant of a Community plant variety right for the potato variety Melrose – Failure to pay the annual fee on time – Cancellation of right – Application for *restitutio in integrum* – Conditions for notification of decisions and communications of the CPVO)

In Case T-2/23,

Romagnoli Fratelli SpA, established in Bologna (Italy), represented by E. Truffo and A. Iurato, lawyers,

applicant,

v

Community Plant Variety Office (CPVO), represented by M. García-Moncó Fuente and Á. Martínez López, acting as Agents,

defendant,

THE GENERAL COURT (Third Chamber),

composed of F. Schalin, President, I. Nõmm (Rapporteur) and G. Steinfatt, Judges,

Registrar: V. Di Bucci,

having regard to the written part of the procedure,

having regard to the fact that no request for a hearing was submitted by the parties within three weeks after service of notification of the close of the written part of the procedure, and having decided to rule on the action without an oral part of the procedure, pursuant to Article 106(3) of the Rules of Procedure of the General Court,

gives the following

* Language of the case: English.

Judgment

1 By its action under Article 263 TFEU, the applicant, Romagnoli Fratelli SpA, seeks annulment of the decision of the Community Plant Variety Office (CPVO) of 7 November 2022 ('the contested decision').

Background to the dispute

2 On 10 December 2009, the applicant applied to the CPVO for a Community plant variety right, pursuant to Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (OJ 1994 L 227, p. 1). That application was registered under number 2009/2240.

3 The plant variety in respect of which the Community plant variety right was sought is the potato variety Melrose, belonging to the species *Solanum tuberosum L.*

4 By decision of the CPVO of 20 February 2012, the Community plant variety right was granted for the plant variety at issue.

5 On 27 October 2021, a debit note relating to payment of the annual fee for the Community plant variety right at issue was issued and sent to the applicant by the CPVO in its user area, known as 'MyPVR'.

6 As the debit note had not been paid within the time limit set, a formal reminder was sent to the applicant on 10 January 2022, in accordance with Article 83(2) of Regulation No 2100/94, via the MyPVR user area. In the context of that reminder, the CPVO invited the applicant to pay the amount due in respect of the annual fee within one month in order to avoid the cancellation of the Community plant variety right in question pursuant to Article 21(2)(c) of that regulation.

7 On 16 February 2022, as the documents relating to the annual fee had not been downloaded by the applicant from the MyPVR user area, the CPVO sent the applicant another reminder by email, without however extending the time limit for payment.

8 On 21 March 2022, as the annual fee had not been paid within the period prescribed, the CPVO cancelled the Community plant variety right at issue. The decision on that cancellation was served on the applicant on 22 March 2022.

9 On 6 May 2022, the applicant filed an application for *restitutio in integrum*, pursuant to Article 80 of Regulation No 2100/94, in relation to the time limit for payment of the annual fee referred to above.

10 That same day, the applicant paid the annual fee that had not yet been paid.

11 By the contested decision, the CPVO did not grant the applicant's application for *restitutio in integrum*. That application was dismissed on the ground that, first, it did not satisfy the conditions laid down in Article 80(2) of Regulation No 2100/94 and, second, the applicant had not shown that it had faced unforeseeable circumstances and had taken all due care required for the conditions laid down in Article 80(1) of that regulation to be satisfied.

Forms of order sought

12 The applicant claims, in essence, that the Court should:

– annul the contested decision;

– order the CPVO to pay the costs.

13 The CPVO contends, in essence, that the Court should:

– dismiss the action;

– order the applicant to pay the costs.

Admissibility

14 The CPVO contends that the action should be dismissed in its entirety as inadmissible, since no legal basis exists for the present action either in Regulation No 2100/94 or in Commission Regulation (EC) No 874/2009 of 17 September 2009 establishing implementing rules for the application of Regulation No 2100/94 as regards proceedings before the CPVO (OJ 2009 L 251, p. 3). In addition, in view of the absence of legal basis in those regulations, it also challenges the applicability of the fourth paragraph of Article 263 TFEU.

15 The applicant disputes the CPVO's arguments.

16 According to the fourth paragraph of Article 263 TFEU, any natural or legal person may institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and which does not entail implementing measures.

17 The fifth paragraph of Article 263 TFEU provides that acts setting up bodies, offices and agencies of the Union may lay down specific conditions and arrangements concerning actions brought by natural or legal persons against acts of those bodies, offices or agencies intended to produce legal effects in relation to them.

18 According to settled case-law, any provision or measure adopted by EU institutions, bodies, offices and agencies, whatever form they might take, the legal effects of which are binding on, and capable of affecting the interests of, a natural or legal person by bringing about a distinct change in their legal position may be the subject of an action for annulment (see judgment of 31 January 2019, *International Management Group* v *Commission*, C-183/17 P and C-184/17 P, EU:C:2019:78, paragraph 51 and the case-law cited).

19 In that regard, suffice it to note that, in the first place, the applicant is the addressee of the contested decision and, in the second place, by that decision, the CPVO unequivocally stated its final position on the application for *restitutio in integrum* at issue, thereby producing binding legal effects capable of affecting the applicant's interests.

20 However, the CPVO contends that the fifth paragraph of Article 263 TFEU legitimises its ability to rule on applications for *restitutio in integrum* without the possibility of an appeal before the Board of Appeal of the CPVO or before the Court, since such an action is not provided for either by Regulation No 2100/94 or by Regulation No 874/2009, which constitute the 'specific conditions and arrangements' within the meaning of the fifth paragraph of that article. Therefore, it submits that the contested decision cannot be the subject of an action before the Court under the fourth paragraph of Article 263 TFEU.

21 In that regard, it must be recalled that it follows from Article 2 TEU that the European Union is founded, inter alia, on the values of equality and the rule of law. The very existence of effective judicial review designed to ensure compliance with provisions of EU law is inherent in the existence of the rule of law (see judgment of 25 June 2020, *SatCen* v *KF*, C-14/19 P, EU:C:2020:492, paragraph 58 and the case-law cited).

22 Article 19 TEU, which gives concrete expression to the value of the rule of law stated in Article 2 TEU, entrusts the responsibility for ensuring the full application of EU law in all Member States and effective judicial protection of the rights of individuals under that law to national courts and tribunals and to the Court of Justice of the European Union, while the Court of Justice has exclusive jurisdiction to give the definitive interpretation of that law (see judgment of 25 June 2020, *SatCen* v *KF*, C-14/19 P, EU:C:2020:492, paragraph 59 and the case-law cited).

23 Moreover, as provided in the first sentence of Article 256(1) TFEU, the General Court is to have jurisdiction to hear and determine at first instance actions or proceedings referred to in Articles 263, 265, 268, 270 and 272 TFEU, with the exception of those assigned to a specialised court set up under Article 257 TFEU and those reserved in the Statute of the Court of Justice of the European Union for the Court of Justice.

24 Thus, the judicial system of the European Union is a complete system of legal remedies and procedures designed to ensure review of the legality of acts of the institutions, bodies, offices and agencies of the European Union (see judgment of 25 June 2020, *SatCen* v *KF*, C-14/19 P, EU:C:2020:492, paragraph 60 and the case-law cited).

25 Therefore, although the 'specific conditions and arrangements' mentioned in the fifth paragraph of Article 263 TFEU do indeed allow a body, office or agency of the European Union to draw up internal terms and conditions which are prerequisites to legal proceedings and govern, inter alia, the operation of a self-monitoring mechanism or the course of an out-of-court settlement, those conditions and arrangements cannot be interpreted as allowing an institution of the European Union to shield disputes involving the interpretation or application of EU law from the jurisdiction of the EU Courts (see judgment of 25 June 2020, *SatCen* v *KF*, C-14/19 P, EU:C:2020:492, paragraph 62 and the case-law cited).

26 Furthermore, it follows from Article 81(1) of Regulation No 2100/94 that, in the absence of procedural provisions in that regulation or in provisions adopted pursuant to that regulation, the CPVO is to apply the principles of procedural law which are generally recognised in the Member States.

27 In that regard, it must be pointed out that the fourth paragraph of Article 263 TFEU – which provides for the possibility of proceedings against acts of the institutions, bodies, offices and agencies of the European Union – precisely reflects such a 'principl[e] of procedural law which [is] generally recognised in the Member States' provided for in Article 81(1) of Regulation

No 2100/94. Accordingly, even though Regulation No 2100/94 does not explicitly provide for a remedy before the Board of Appeal of the CPVO or directly before the General Court for the decisions taken by the CPVO in the wake of an application for *restitutio in integrum* filed under Article 80 of Regulation No 2100/94, a remedy nevertheless exists by virtue of Article 81(1) of that regulation and of the fourth paragraph of Article 263 TFEU.

28 In any event, it must be found that granting the CPVO exclusive jurisdiction to interpret and apply Regulation No 2100/94 and, in particular, Article 80 thereof is contrary to the case-law cited in paragraphs 21 to 25 above (see, to that effect, judgment of 25 June 2020, *SatCen* v *KF*, C-14/19 P, EU:C:2020:492, paragraph 64).

29 In the light of the foregoing, the CPVO's plea of inadmissibility must be rejected.

Substance

30 The action is based, in essence, on two pleas in law, the first alleging infringement of Article 80(1) of Regulation No 2100/94, the second alleging infringement of Article 65 of Regulation No 874/2009.

Admissibility of the evidence produced for the first time before the Court

31 It should be borne in mind that it is apparent from the CPVO's file that Annexes 1, 8 to 12, 14 to 16 and 23 to 25, attached to the application, were not produced by the applicant during the administrative procedure before the CPVO.

32 In that regard, it must be recalled that, according to the case-law, the legality of an EU act is to be assessed in the light of the information available to the institution when it was adopted. In proceedings before the EU judicature, no one, therefore, can rely on matters of fact which were not put forward in the course of the administrative procedure (see judgment of 8 March 2023, *Novasol* v *ECHA*, T-70/22, not published, EU:T:2023:106, paragraph 22 and the case-law cited).

33 Accordingly, in so far as the annexes mentioned in paragraph 31 above were produced for the first time before the Court, they may not be taken into consideration for the purpose of reviewing the legality of the contested decision and must therefore be disregarded.

First plea: infringement of Article 80(1) of Regulation No 2100/94

34 In the first plea in law, the applicant raises, in essence, two complaints, the first relating to *force majeure* or to the unforeseeable circumstances caused by the COVID-19 pandemic justifying the failure to respect the time limit for payment of the annual fee set by the CPVO, the second relating to the CPVO's misinterpretation of the evidence it submitted.

35 The CPVO disputes the applicant's arguments.

36 According to Article 80(1) of Regulation No 2100/94, where, in spite of having taken all due care in the particular circumstances, the applicant for a Community plant variety right or the holder or any other party to proceedings before the CPVO has been unable to observe a time limit vis-à-vis

the latter, his or her rights shall, upon application, be restored if his or her failure to respect the time limit has resulted directly, by virtue of that regulation, in the loss of any right or means of redress.

37 It is apparent from Article 80(1) of Regulation No 2100/94 that *restitutio in integrum* is subject to two cumulative requirements, the first being that the person in question has taken all due care in the particular circumstances, and the second being that the failure by that person to respect the time limit has the direct consequence of causing the loss of any right or means of redress (see, by analogy, judgment of 15 September 2011, *Prinz Sobieski zu Schwarzenberg* v *OHIM – British-American Tobacco Polska (Romuald Prinz Sobieski zu Schwarzenberg)*, T-271/09, not published, EU:T:2011:478, paragraph 53 and the case-law cited).

38 Furthermore, observance of time limits is a matter of public policy and *restitutio in integrum* is liable to undermine legal certainty. Consequently, the conditions for the application of *restitutio in integrum* must be interpreted strictly (see, to that effect and by analogy, order of 9 December 2022, *AMO Development* v *EUIPO (Medical instruments)*, T-311/22, not published, EU:T:2022:822, paragraph 20 and the case-law cited).

39 In the case at hand, in the first plea, the applicant disputes, in essence, the CPVO's assessment of the first condition referred to in paragraph 37 above, in so far as it concluded that the applicant had not proved that, first, it was faced with unforeseeable circumstances and, second, it had taken all due care in those circumstances.

40 In the first place, the applicant submits that such unforeseeable circumstances were established, on the one hand, on account of the unexpected COVID-19 pandemic situation resulting in the absence of its only employee responsible for correspondence with the CPVO and, on the other hand, on account of the cyber-attack it suffered.

41 In terms of the alleged cyber-attack suffered by the applicant, it must be pointed out that neither that argument nor evidence supporting it was submitted to the CPVO at the time of the application for *restitutio in integrum*. Accordingly, in the light of the case-law cited in paragraph 32 above, that argument must be rejected.

42 So far as concerns the unforeseeable circumstances arising out of the COVID-19 pandemic and resulting in the absence of the only employee who was responsible for correspondence with the CPVO, the applicant has submitted a single item of evidence, namely a certificate dated 7 June 2022 of Confcommercio Ascom Bologna declaring that, in the period from October 2021 to April 2022, its office staff had had 600 hours of absence on account of illness related to COVID-19. In addition, in its email to the CPVO of 7 June 2022, the applicant stated that the said employee had been absent twice in the course of the five preceding months on account of COVID-19.

43 In that regard, it must be pointed out that the certificate of 7 June 2022 issued by Confcommercio Ascom Bologna, attesting to the total number of working hours missed by all of the applicant's staff, indicates neither the number of hours or days nor the period during which the only employee responsible for correspondence with the CPVO was absent and thus unable to carry out the tasks entrusted to her, relating to correspondence with the CPVO. It should therefore be borne in mind that the applicant has not adduced evidence to show that that employee had been absent and that it had thus faced particular circumstances due to the COVID-19 pandemic which prevented it from respecting the time limit for payment of the annual fee.

44 In the second place, the applicant claims that, given its average size, it did not have the financial resources to hire additional staff to replace staff on medical leave.

45 In that regard, it should be pointed out that, in its application for *restitutio in integrum*, the applicant did not provide any evidence other than the certificate of 7 June 2022 issued by Confcommercio Ascom Bologna referred to in paragraph 42 above. Accordingly, in the absence of any evidence in that regard, the mere finding that there were insufficient financial resources to engage additional staff is not sufficient, on its own, to show that the applicant faced unforeseeable circumstances and that it acted with all due care in those circumstances in order to respect the time limit for payment of the annual fee set by the CPVO.

46 Moreover, it must be stated that the applicant has not explained the reasons why other possible solutions had not been applied in order to make up for the absence of its employee who was responsible for correspondence with the CPVO. For example, even if the absence of that employee had been proved – which is not the case here – the applicant has completely failed to explain or substantiate with evidence what prevented it from handing over the said employee's tasks and login details for the MyPVR user area to another member of its staff for a period of approximately five months.

47 Furthermore, on 16 February 2022, the CPVO sent the applicant an additional email inviting it to consult its MyPVR user area and expressing its availability to provide any additional information relating to access to MyPVR. Even supposing that the applicant had had problems accessing MyPVR, however, it must be noted that it neither responded to that email nor asked for assistance in that regard. The applicant has therefore failed to show that it had acted with all due care within the meaning of Article 80(1) of Regulation No 2100/94.

48 Accordingly, after having taken into consideration the facts which had been provided to it at the time of the application for *restitutio in integrum*, the CPVO was right to conclude that the applicant had not proved that it had faced particular circumstances or that it had acted with all due care in view of those circumstances.

49 In the light of the foregoing, the first plea must be rejected as unfounded.

Second plea: infringement of Article 65 of Regulation No 874/2009

50 In the second plea in law, the applicant claims, in the first place, that it did not receive the reminder sent by the CPVO on 10 January 2022 concerning the unpaid annual fee and it complains that the CPVO infringed Article 65 of Regulation No 874/2009 in that it failed to provide proof of actual notification and receipt of that reminder. In the second place, it disputes, in a general manner, the fact that the MyPVR user area is deemed an official channel of notification of documents or decisions within the meaning of Regulation No 2100/94 and Regulation No 874/2009 and, consequently, it calls into question the applicability of the Terms and Conditions concerning electronic systems of communication with and by the CPVO ('the MyPVR terms and conditions'), as defined in the decision of 20 December 2016 of the President of the CPVO.

51 The CPVO disputes the applicant's arguments.

52 In the first place, it is necessary to examine whether the MyPVR user area can be regarded as an official channel of notification of documents or decisions within the meaning of Regulations No 2100/94 and No 874/2009. In the case at hand, as the debit note of 27 October 2021 and the reminder of 10 January 2022 were notified by means of the MyPVR user area, it is necessary to examine the validity of that user area as an official channel of notification for those two documents.

53 Under Article 79 of Regulation No 2100/94, the CPVO is to effect of its own motion service of all decisions and summonses, and of notifications and communications, from which a time limit is reckoned, or which are required to be served either in pursuance of other provisions of that regulation or by provisions adopted pursuant to the said regulation or by order of the President of the CPVO. Service may be effected through the competent variety offices of the Member States.

54 It should be stated that, in the case at hand, given that the debit note of 27 October 2021 and the reminder of 10 January 2022 both set a time limit to be observed by the applicant, they must be regarded as 'notifications [or] communications, from which a time limit is reckoned' within the meaning of Article 79 of Regulation No 2100/94.

55 Under Article 64(4) of Regulation No 874/2009, documents or copies thereof containing actions for which service is provided for in Article 79 of Regulation No 2100/94 are to be served by electronic means to be determined by the President of the CPVO or by postal means by recorded delivery with advice of delivery served.

56 It is apparent from the wording of Article 64(4) of Regulation No 874/2009 that, first, communications and notifications from the CPVO from which a time limit is reckoned, within the meaning of Article 79 of Regulation No 2100/94, may be notified by electronic means and, second, the details of such service by electronic means are to be determined by the President of the CPVO.

57 In accordance with Article 64(4) of Regulation No 874/2009, on 20 December 2016, the President of the CPVO adopted a decision concerning electronic communication with and by the CPVO.

58 The first paragraph of Article 3 of the decision of 20 December 2016 of the President of the CPVO provides that the CPVO will make available, on its website 'www.cpvo.europa.eu', an electronic communication platform that will enable users to receive, view, print and save all documents and notifications available in electronic form sent to them by the CPVO as well as reply to notifications and requests for files and other documents. That electronic communication area ('User Area') is a restricted system and will be referred to as 'MyPVR'.

59 The fourth paragraph of Article 3 of the decision of 20 December 2016 of the President of the CPVO provides that, once its implementation has been completed, MyPVR will offer the option of receiving all communications from the CPVO electronically. If the user chooses that option, the CPVO will send all notifications electronically via that user area, unless that is impossible for technical reasons.

60 According to the first paragraph of Article 4 of the decision of 20 December 2016 of the President of the CPVO, once the user has activated the option of communicating with the CPVO electronically, all official notifications of the CPVO available in electronic form will be sent to him or her via MyPVR. The service of documents containing actions for which Article 79 of Regulation No 2100/94 provides for automatic service will be done via MyPVR.

61 According to Article 6 of the decision of 20 December 2016 of the President of the CPVO, the terms and conditions concerning electronic communication with and by the CPVO within MyPVR available on the CPVO website will further specify the e-actions, the requirements thereof and the technical conditions under which electronic notifications and/or communications with and by the CPVO can be made, as well as the standard undertakings that have to be signed by the users.

62 It should be pointed out that, contrary to what the applicant claims, it is apparent from the first and fourth paragraphs of Article 3 and from the first paragraph of Article 4 of the decision of 20 December 2016 of the President of the CPVO, referred to in paragraphs 59 and 60 above, that all communications and notifications, including those covered by Article 79 of Regulation No 2100/94, may be made via the MyPVR user area, provided that the user has activated the option enabling the CPVO to communicate with him or her electronically.

63 In addition, Article 6 of the decision of 20 December 2016 of the President of the CPVO, referred to in paragraph 61 above, provides that the MyPVR terms and conditions are to specify further the e-actions, the requirements thereof and the technical conditions under which electronic notifications and/or communications from the CPVO can be made. Consequently, the applicability of those terms and conditions cannot be called into question, either.

64 Furthermore, point 4(b) of version 3.0 of the MyPVR terms and conditions reaffirms that, where the user has opted for electronic communication, the CPVO will validly notify him or her of decisions, communications and other documents electronically via the user area, unless that proves impossible for technical reasons or in cases where certain functionalities of that area are under development. In such cases, electronic communications via email or other valid means of communication would be allowed as an approved notification tool.

65 Therefore, the complaint that the MyPVR user area is unlawful in that it constitutes one of the official channels of notification cannot succeed.

66 However, it is apparent from the fourth paragraph of Article 3 and from the first paragraph of Article 4 of the decision of 20 December 2016 of the President of the CPVO as well as from point 4(b) of version 3.0 of the MyPVR terms and conditions that the use of MyPVR as an official channel of notification is subject to the condition that the user has activated the option enabling the CPVO to communicate with him or her electronically.

67 In that regard, it is appropriate to note that it is not disputed by the parties that the applicant had opted for electronic communication via MyPVR, within the meaning of the provisions mentioned in paragraph 66 above. In addition, it is apparent from Annex C.2 to the CPVO's response of 19 September 2023 that, on 12 February 2021, the applicant had accepted version 3.0 of the MyPVR terms and conditions, thereby confirming its decision to opt for electronic communication.

68 According to point 2 of version 3.0 of the MyPVR terms and conditions, users undertake to use the user area to, inter alia, receive notifications and documents sent by the CPVO. Electronic communications via email can only be allowed as an approved communication tool in cases where the platform is not appropriate. In addition, the second subparagraph of that point provides that, by using the user area, the user undertakes to comply with the obligations set out in the first subparagraph thereof.

69 There can therefore be no doubt that, by using the user area and accepting the MyPVR terms and conditions, the applicant agreed to receive communications and notifications from the CPVO via the MyPVR user area.

70 In the light of the foregoing, the complaint relating to the unlawfulness of MyPVR as an official channel of notification in respect of the applicant must be rejected.

71 In the second place, so far as concerns the alleged infringement of Article 65 of Regulation No 874/2009 in that the CPVO did not provide proof of actual notification and of receipt of the reminder sent on 10 January 2022, it should be pointed out that it is apparent from the CPVO's file that the reminder was sent via MyPVR. Therefore, Article 65 of Regulation No 874/2009, relating to service effected by post, cannot apply in this case. In that regard, reference should be made to Article 64a of Regulation No 874/2009, relating to service by electronic means or any other technical means.

72 Article 64a(1) of Regulation No 874/2009 provides that service by electronic means is to be made by transmitting a digital copy of the document to be notified. Service is to be deemed to have taken place on the date on which the communication was received by the recipient. The President of the CPVO is to determine the details of service by electronic means. According to Article 64a(3) of the same regulation, the President of the CPVO is to determine the details of service by other technical means of communication.

73 As in paragraphs 67 to 69 above, it must be reiterated that the applicant agreed to receive communications and notifications from the CPVO via MyPVR. In that regard, it should also be recalled that, according to the first paragraph of Article 4 of the decision of 20 December 2016 of the President of the CPVO, once the user has activated the option of communicating with the CPVO electronically, all official notifications of the CPVO available in electronic form, including documents containing actions for which service is provided for in Article 79 of Regulation No 2100/94, will be notified to him or her via MyPVR. MyPVR should therefore be regarded as the only official channel for communicating official notifications, including those provided for in Article 79 of Regulation No 2100/94.

74 Consequently, pursuant to the first paragraph of Article 4 of the decision of 20 December 2016 of the President of the CPVO, the CPVO notified to the applicant via MyPVR, in the first place, on 27 October 2021, a debit note relating to payment of the annual fee, followed, on 28 October 2021, by an automatic email and, in the second place, on 10 January 2022, the reminder in question inviting it to pay the unpaid fee in accordance with Article 83(2) of Regulation No 2100/94, followed, on 11 January 2022, by an automatic email.

75 As far as actual notification of the reminder of 10 January 2022 is concerned, the fourth paragraph of Article 4 of the decision of 20 December 2016 of the President of the CPVO states that a decision or other document is deemed to have been notified on the expiry of the seventh day following the day on which an email was sent to the user informing him or her that the digital copy of the decision or document was uploaded by the CPVO to the user area. In the case at hand, it follows that the reminder of 10 January 2022 must be regarded as having been notified on 18 January 2022, namely the seventh day following 11 January 2022, the date of the automatic email informing the applicant of the uploading of the document at issue to the MyPVR user area.

76 Furthermore, in accordance with the fifth paragraph of Article 4 of the decision of 20 December 2016 of the President of the CPVO, if a user cannot access a decision or any other document, he or she must inform the CPVO of it immediately. It must be pointed out that, in the case at hand, the applicant did not inform the CPVO of any problems accessing the documents at issue.

77 Consequently, the CPVO cannot be criticised for not having notified the reminder of 10 January 2022. In the absence of evidence to the contrary from the applicant, the reminder at issue is deemed to have been received by it on 18 January 2022. Therefore, that complaint must also be rejected as unfounded.

78 In the light of the foregoing, the second plea in law must be rejected and, accordingly, the action must be dismissed in its entirety.

Costs

79 Under Article 134(1) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

80 Since the applicant has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the CPVO.

On those grounds,

THE GENERAL COURT (Third Chamber)

hereby:

1. Dismisses the action;

2. Orders Romagnoli Fratelli SpA to pay the costs.

Schalin Nõmm Steinfatt

Delivered in open court in Luxembourg on 17 April 2024.

V. Di Bucci S. Papasavvas
Registrar President