Appeal brought on 28 February 2007 by Eurostrategies SPRL against the order of the Court of First Instance (Fourth Chamber) delivered on 1 December 2006 in Case T-203/06: Eurostrategies sprl v Commission of the European Communities

(Case C-122/07 P)

(2007/C 95/60)

Language of the case: English

Parties

Appellant: Eurostrategies SPRL (represented by: R.A. Lang and S. Crosby, Solicitors)

Other party to the proceedings: Commission of the European Communities

Form of order sought

The appellant claims that the Court should:

— annul the Order of the Court of First Instance of 1 December 2006 in Case T-203/06 quo ad its reasoning only.

— make a ruling that the costs of the appeal be awarded in the appellant's favour.

Pleas in law and main arguments

The appellant maintains that:

1. The Court of First Instance (CFI) infringed the principle of equality of arms, as enshrined in Article 6(1) of the European Convention on Human Rights and the EU Treaty by refusing to hear the Appellant's side of the story in respect of whether or not the appellant had received a supposed 'holding reply', which would, had it been received, have extended the Commission's deadline by fifteen days, thus obviating the need for a Court action.

   Further the CFI failed to hear the appellant's side of the story in respect of a second letter which the Commission contended was sent by email but which was in fact sent by fax.

2. The CFI infringed Regulation (EC) No 1049/2001 ([1]) of the European Parliament and the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents by finding that the Commission was entitled to the benefit of a 15-day extension of time pursuant to Article 8(2) of the Regulation, in the absence of evidence of the fulfilment of the requisite conditions for such an extension. One of the requisite conditions is that the 'applicant is notified'. However, the only evidence produced by the Commission was the effect that an email was sent, not that it was received. The appellant contends that an email does not take legal effect until it is seen by the recipient. Thus, notification did not take place and so the stipulations of Article 8 (2) of Regulation 1049/2001 were not fulfilled.

3. The CFI infringed a mandatory rule of procedure by not carrying out a balancing exercise in reaching its judgment. The appellant cites Articles 47(1) and 67(3) of the Rules of Procedure of the Court of First Instance of the European Communities of 2 May 1991 as examples of the need to carry out a balancing exercise.

4. The CFI made a manifest error of assessment by distorting the clear sense of the evidence before it; the evidence in no way demonstrates notification, by the Commission, to the appellant, of its request for a 15-day extension.

5. In the alternative to plea 4, the CFI infringed Community law in holding that an email takes legal effect on sending, not on receipt.

([1]) OJ L 145, p. 43.

Action brought on 28 February 2007 — Commission of the European Communities v Kingdom of the Netherlands

(Case C-123/07)

(2007/C 95/61)

Language of the case: Dutch

Parties

Applicant: Commission of the European Communities (represented by: B. Stromsky and H. van Vliet, Agents)

Defendant: Kingdom of the Netherlands

Form of order sought

— declare that, by failing to bring into force all of the laws, regulations and administrative provisions necessary to comply with Directive 2004/27/EC ([1]) of the European Parliament and of the Council of 31 March 2004 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use, or in any event by not informing the Commission of those provisions, the Kingdom of the Netherlands has failed to fulfil its obligations under that directive;

— order the Kingdom of the Netherlands to pay the costs.

Pleas in law and main arguments

The period within which the directive had to be transposed in national law expired on 30 October 2005.

([1]) OJ 2004 L 136, p. 34.