



Reports of Cases

ORDER OF THE GENERAL COURT (Second Chamber)

21 January 2014*

(Action for annulment — Legal person governed by private law — Absence of proof of existence in law — Article 44(5)(a) of the Rules of Procedure of the General Court — Manifest inadmissibility)

In Case T-168/13,

European Platform Against Windfarms (EPAW), represented by C. Kiss, lawyer,

applicant,

v

European Commission, represented initially by K. Herrmann and P. Oliver, and subsequently by L. Pignatoro Nolin, K. Herrmann and J. Tomkin, acting as Agents,

defendant,

ACTION for annulment of the Communication of 6 June 2012 from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, entitled 'Renewable Energy: a major player in the European energy market', and of the Commission's decision of 21 January 2013 rejecting as inadmissible the request made by the applicant for review by the Commission of that communication,

THE GENERAL COURT (Second Chamber),

composed of M.E. Martins Ribeiro, President, S. Gervasoni (Rapporteur) and L. Madise, Judges,

Registrar: E. Coulon,

makes the following

Order

Procedure and forms of order sought

- 1 By application lodged at the Registry of the Court on 18 March 2013, the applicant, European Platform Against Windfarms (EPAW), brought the present action.

* Language of the case: English.

- 2 By letters of 4 and 25 April and of 14 May 2013, the Court requested from the applicant, pursuant to Article 44(6) of its Rules of Procedure, for the purpose of putting the application in order, first, documents making it possible for the applicant's existence in law as a legal person established at the address stated in the application to be verified, in accordance with Article 44(5)(a) of the Rules of Procedure, and, secondly, proof that the authority granted by the applicant to its lawyer had been properly conferred by someone authorised for that purpose, in accordance with Article 44(5)(b) of the Rules of Procedure.
- 3 The applicant replied to the letters of 4 April and 14 May 2013 within the prescribed time-limits by letters lodged at the Registry of the Court on 19 April and 30 May 2013 respectively.
- 4 On 26 June 2013, the European Commission requested the Court to stay the present proceedings, pursuant to Article 77(d) of the Rules of Procedure, pending the final decisions of the Court of Justice in Cases C-401/12 P *Council v Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht*, C-402/12 P *Parliament v Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht*, C-403/12 P *Commission v Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht*, C-404/12 P *Council v Stichting Natuur en Milieu and Pesticide Action Network Europe*, and C-405/12 P *Commission v Stichting Natuur en Milieu and Pesticide Action Network Europe*. The applicant did not submit observations on that request within the prescribed period. By decision of the President of the Second Chamber of the Court of 30 September 2013, that request was rejected.
- 5 The applicant claims that the Court should:
- annul the Communication of 6 June 2012 from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, entitled 'Renewable Energy: a major player in the European energy market';
 - annul the Commission's decision of 21 January 2013 rejecting as inadmissible the request made by the applicant for review by the Commission of that communication.
- 6 The Commission contends that the Court should:
- dismiss the application;
 - order the applicant to pay the costs.

Law

- 7 Under Article 111 of the Rules of Procedure, where an action is manifestly inadmissible or manifestly lacking any foundation in law, the Court may, by reasoned order, give a decision on the action without taking further steps in the proceedings.
- 8 In the present case, the Court considers that it has sufficient information from the documents before it and that there is no need to take any further steps in the proceedings.
- 9 The admissibility of an action for annulment brought by a body under the fourth paragraph of Article 263 TFEU depends, first and foremost, on that body's status as a legal person.
- 10 Under Article 44(5) of the Rules of Procedure, an application made by a legal person governed by private law must be accompanied by the instrument or instruments constituting and regulating that legal person or a recent extract from the register of companies, firms or associations or any other proof of its existence in law, and proof that the authority granted to the applicant's lawyer has been properly conferred on him by someone authorised for that purpose.

- 11 In the present case, without it being necessary to rule on the propriety of the authority granted to the applicant's lawyer, it must be held that the application, as lodged at the Registry of the Court on 18 March 2013, does not comply with Article 44(5)(a) of the Rules of Procedure, as the applicant did not attach to its application the instrument or instruments constituting and regulating it, or any other proof of its existence in law.
- 12 Furthermore, despite the requests for regularisation sent to it by the Court (see paragraph 2 above), the applicant has put forward no evidence capable of proving its existence in law. It merely set out two series of arguments capable, in its view, of demonstrating that it had legal personality. Those arguments cannot, however, be accepted.
- 13 In the first place, the applicant, while acknowledging that it is not registered in any Member State of the European Union, considers that, as it is based mainly in Ireland, it must be recognised as having legal personality under Irish law, since Irish law does not provide for any obligation to be registered with the national authorities. In this regard, it refers to the provisions of section 37(4)(c) to (e) of the Planning and Development Act 2000, as amended by the Planning and Development (Strategic Infrastructure) Act 2006 ('the Planning and Development Act 2000, as amended'). The applicant states, moreover, that, contrary to the address mentioned in the application, its principal office is, in fact, in Ireland. The information in the application indicating an address in France is, it submits, incorrect, since that address is that of its chairman and of the principal office of a non-governmental organisation, registered in France, which is one of its members.
- 14 In that regard, it should be stated that, under section 37(4)(c) of the Planning and Development Act 2000, as amended, a private body or organisation satisfying the conditions set out in paragraph (d) thereof is to be entitled to appeal to An Bord Pleanála, a quasi-judicial authority, against a decision on an application for development. It follows, in that regard, from section 37(4)(d) of that act that the body or organisation at issue must satisfy the requirements relating, in particular, to the pursuit of objectives for the protection of the environment during a period of 12 months preceding the bringing of that case before An Bord Pleanála, and, as the case may be, the additional requirements, concerning in particular possession of a specified legal personality and compliance with a constitution or rules, prescribed by the Irish Minister for the Environment, Heritage and Local Government, in accordance with section 37(4)(e) of the Planning and Development Act 2000, as amended.
- 15 It should further be pointed out that, as is apparent from the documents on the case-file, on 26 October 2010 no additional requirement had been prescribed by the Irish Minister for the Environment, Heritage and Local Government under section 37(4)(e) of the Planning and Development Act 2000, as amended. On that date, there was, moreover, no plan to prescribe any such additional requirements.
- 16 Those provisions, in so far as they come under sectoral legislation relating to planning and development, are thus confined, within the field which they cover, to granting the bodies at issue a limited and specific right to bring an action before a single body, in this case An Bord Pleanála.
- 17 A limited right to bring an action, such as that invoked by the applicant, before, moreover, a body the judicial nature of which has not been fully demonstrated, is, however, insufficient to establish that the applicant has general legal personality under Irish law enabling it, in the absence of any documentary proof of its existence in law, to bring an action before the European Union Courts on the basis of the fourth paragraph of Article 263 TFEU.
- 18 In those circumstances, it must be held that, even if it is assumed that the applicant's principal office is in Ireland and that the mention of the address in France in the application is merely a mistake, the reference solely to the provisions of Irish law mentioned in paragraphs 13 to 15 above is, in the

absence of any other proof capable of demonstrating the applicant's legal personality, insufficient for the purpose of proving its existence in law in accordance with Article 44(5)(a) of the Rules of Procedure.

- 19 That proof is also not established by the applicant's inclusion on the Transparency Register of the European Union. Even if it is assumed that that registration establishes that the applicant is, as it claims, an existing organisation, based in Ireland, that does not alter the fact that inclusion on that register is not subject to the existence of legal personality on the part of the body concerned, as is in particular apparent from paragraph 14 of the Agreement of 23 June 2011 between the European Parliament and the European Commission on the establishment of a transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation (OJ 2011 L 191, p. 29). According to that paragraph 14, '[n]etworks, platforms or other forms of collective activity which have no legal status or legal personality but which constitute *de facto* a source of organised influence and which are engaged in activities falling within the scope of the register are expected to register'.
- 20 In the second place, the applicant claims that, as the Commission acknowledged in its decision of 21 January 2013, referred to in paragraph 5 above, it satisfies the conditions set out in Article 11 of 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). From this it infers that it is entitled to make a request for internal review, in accordance with Article 10 of that regulation, and, consequently, to bring before the Court an action for annulment of the decision taken by the Commission in that regard.
- 21 Those arguments cannot be accepted.
- 22 First, under Article 10(1) of Regulation No 1367/2006, any non-governmental organisation which meets the criteria set out in Article 11 of that regulation is entitled to make a request for internal review to the European Union institution which has adopted an administrative act under environmental law. Article 11(1) of that regulation lays down four conditions in that regard. According to the first condition, set out in Article 11(1)(a) of Regulation No 1367/2006, the organisation in question must be an independent non-profit-making legal person in accordance with a Member State's national law or practice. However, as has already been stated, the applicant has not established that its legal personality was recognised in accordance with any Member State's national law or practice.
- 23 Secondly, it is, admittedly, settled case-law that, under the European Union judicial system, an applicant is a legal person if, at the latest by the expiry of the period prescribed for proceedings to be instituted, it has acquired legal personality in accordance with the law governing its constitution (see, by analogy, Case 50/84 *Bensider and Others v Commission* [1984] ECR 3991, paragraphs 7 and 8), or if it has been treated as an independent legal entity by the European Union institutions (Case T-161/94 *Sinochem Heilongjiang v Council* [1996] ECR II-695, paragraph 31, and Case T-170/94 *Shanghai Bicycle v Council* [1997] ECR II-1383, paragraph 26; see, with regard to professional staff associations, Case 175/73 *Union syndicale - Amalgamated European Public Service Union and Others v Council* [1974] ECR 917, paragraphs 11 to 13, and Case 18/74 *General Union of Personnel of European Organisations v Commission* [1974] ECR 933, paragraphs 7 to 9).
- 24 However, in so far as, by the arguments set out in paragraph 20 above, the applicant seeks to rely on the case-law cited in paragraph 23 above, it should be noted that, for the purpose of determining whether an applicant has been treated as an independent legal entity by an institution, the Court of Justice took into consideration in the *Union syndicale - Amalgamated European Public Service Union and Others v Council* and the *General Union of Personnel of European Organisations v Commission* judgments, cited in paragraph 23 above, three factors, namely, first, the representative character of the

entity in question, second, its independence, necessary in order to act as a responsible body in legal matters, as ensured by its constitutional structure under its rules, and, third, the fact that a European Union institution recognised the entity in question as a negotiating body (*Union syndicale – Amalgamated European Public Service Union and Others v Council*, paragraphs 10 to 13, and *General Union of Personnel of European Organisations v Commission*, paragraphs 6 to 9).

- 25 In the present case, without it being necessary to rule on the representative character of the applicant, it should be noted that, in the absence of notification by the latter of its constitutive instruments or of any other document relating to its constitutional structure and internal processes, notwithstanding three requests made by the Court for regularisation of the application, the file does not contain any evidence that the applicant enjoys the independence necessary to act as a responsible body in legal matters.
- 26 It is true that, in the contested decision, the Commission considered that the applicant satisfied the conditions set out in Article 11 of Regulation No 1367/2006. In particular, with regard to the first condition, referred to in paragraph 22 above, the Commission took the view, on the basis of the information provided by the applicant in its request for internal review made in accordance with Article 10 of that regulation and of an e-mail subsequently sent to it by the applicant, that the latter was a non-profit-making legal person registered in France. However, that conclusion resulted from the fact that the applicant itself had sent incorrect information as to its address (see paragraph 13 above). Consequently, the fact that the Commission, on the basis of that information, treated the applicant as an independent legal entity in the contested decision is not capable of establishing the applicant's status as a legal person.
- 27 It follows from all of the foregoing that the action must be dismissed as being manifestly inadmissible in the light of Article 44(5)(a) of the Rules of Procedure.

Costs

- 28 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the Commission.

On those grounds,

THE GENERAL COURT (Second Chamber)

hereby orders:

- 1. The action is dismissed.**
- 2. In addition to bearing its own costs, the European Platform Against Windfarms (EPAW) shall pay the costs incurred by the European Commission.**

Luxembourg, 21 January 2014

E. Coulon
Registrar

M.E. Martins Ribeiro
President